



A GUIDE TO PEACEFUL CO-EXISTENCE ON PRIVATE MAILO LAND



Implemented by



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FOREWORD

Mailo tenure is the most legislated form of tenure in Uganda, having its origins in the 1900 Buganda Agreement. Reforms over the years have seen the evolution of this tenure that is essentially freehold in nature, albeit with its local characteristics arising out of an unresolved tenant question. This status quo was reinstated in the 1995 Constitution, the 1998 Land Act and its subsequent amendments.

Whereas it was expected that reforms introduced by the Constitution and Land Act would suffice in stabilizing Mailo tenure, this has not happened in practice. This is not solely because the reforms introduced do not meet the needs of the landlords and tenants, but also because the interpretations and applicability of such provisions have not been provided to the various users and consumers of land administration services to enable the securing of the rights of both tenants and landlords.

This creates the need to develop a comprehensive guide on Mailo tenure rights to inform local leaders, local communities and land practitioners about land rights, responsibilities, restrictions, procedures for land registration, land administrative structures (roles and responsibilities), women land rights, the project and the land inventorisation process.

Only 16% of registered land is documented in the names of women either individually or jointly. Many women have been denied rights to land and to help protect women's rights to land, gender issues have been integrated in this handbook. Mailo tenure forms the largest proportion of registered land. This is the reason why this handbook focuses on mainstreaming gender into all sections. This will ease integrating it into the day to day work of land administrators at local level as well as awareness among the communities of women's rights to land tenure rights formalization process.

Mailo Tenure has been marred by disputes rendering the land redundant and hampering land markets as conflicts have persisted over long periods of time. The most common land disputes filed in the courts are relating to tenant /landlord relations, trespass on

“Kibanja” by a fellow “Kibanja” owner/mailo land owner, trespass on mailo land with title by persons claiming to have bought “bibanja” or untitled land, compensatory disputes involving the forfeiture of lawful or bonafide occupancy interests or forfeiture of interests less than those, boundary disputes between titled land owners, re-entry issues, trespass on leasehold interests, deprivation of customary interests in land especially in cases where the land is being taken by the town councils, cancellation of title, illegal evictions and destruction of houses and personal property.

The Land Act brings into play many complicated and new terminologies which are not always clear even to the legal mind. Different interpretations are therefore given to these various concepts in the Act. The more obvious is the definition of “bonafide occupant”. This, although defined in the Land Act leaves its interpretation to rely purely on evidence, the proof of which may be difficult. This has caused many landlords to lose access to their land even when they shouldn’t have. On the other hand, it has led to many evictions contrary to the law because the landlords view the law as being against them instead of for them. This has perpetuated land wrangles and even led to loss of lives.

The Private Mailo Tenure Handbook provides hands on tools for all stakeholders engaging in tenure security on Private Mailo enabling them to amicably resolve the Mailo tenure impasse through improved documentation of land rights on Mailo tenure and resolving emerging conflicts. The Private Mailo Handbook contains the practical steps that land administrators need to undertake and the instructions on how particular functions should be delivered, the roles of the tenants and landlords in these processes, their rights and obligations.

The Private Mailo Handbook comes in handy in a country where the State has limited means to provide the technical staff with instruments to guide their functions, and to provide continuous training to staff to enable them cope with the ever evolving and changing landscape of land rights administration in Uganda. Besides, the land law is fragmented across 16 laws, with regulations to accompany them. Furthermore, there are reforms that have been issued through legal notices and in gazettes that may not be known to many of the practitioners.

This Private Mailo Handbook aims to consolidate all the information in one manual, making it easy for reference, but also in a language easily understood by the land administrators at a lower level, the communities who need the information and the rights seeking public.

The Handbook is designed in a manner beneficial to an array of stakeholders in particular, the landlords, the tenants, the local councils officials, the local land administrators, the sub county chiefs and land officers working in Mailo areas.

This handbook has four key themes or sections:

- (i) Evolution of mailo tenure in Uganda,
- (ii) rights and duties recognition of land lords and tenants,
- (iii) mailo tenure land rights administration which include formalization and certification procedures and
- (iv) land dispute resolution and conflict management, considering both administrative and juridical disputes.

The development of this handbook has been made possible by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in partnership with LANDnet with financial assistance from the European Union and the German Federal Ministry for Economic Cooperation and Development (BMZ).

PREFACE

The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in collaboration with the Ministry of Lands, Housing and Urban Development (MLHUD) is implementing the “Improvement of Land Governance in Uganda (ILGU) to increase productivity of small-scale farmers on private Mailo-land project. The project is jointly funded by the European Union and the German Government and is part of the project “Responsible Land Policy in Uganda” (RELAPU), which is part of the Special Initiative “One World, No Hunger” of the German Federal Ministry for Economic Cooperation and Development (BMZ). The overall objective of the project is to: “Contribute to improved food security, improved livelihoods and poverty alleviation for small-scale farmers and other users of natural resources, in particular for women and marginalized groups in Central Uganda.”

The focus of the ILGU project is on three action areas:

- i. Improve the institutional framework and procedures to secure tenure rights in Central Uganda;
- ii. Increase the engagement of the civil society in the formalization and implementation of a responsible land policy 3) Raise Awareness of private agriculture investors and financial institutions about responsible land policy along internationally agreed guidelines and the national land policy (NLP).

As a pilot, the GIZ ILGU project plans to conduct a systematic inventory of the tenants in selected sub-counties in Mubende and Mityana districts. The inventory process is purposed to provide information on the tenancy land size and the boundary delimitation. This process will be done systematically in two phases i.e. the first phase is before the field survey by the neighbours, then as a community exercise while the mediation of emerging boundary conflicts is handled on the spot.

The systematic approach, including a certain number of additional information captured, is labelled an “inventory”. It is a community-based process because;

- i. all affected and interested land users participate in it,

- ii. the process is accompanied by the ALC,
- iii. disputes are solved on the spot by mediation or left behind clearly defined, and
- iv. finally the result – the Inventory data - is displayed to the local public for one month and objections can be presented.

The collected data will be fed into a database that will allow later on the preparation of the options arrived at after negotiations and mediations supported and witnessed officially by the Area Land Committee (ALC).

Responsible landlords welcome the inventory, because it gives them a clear picture about the situation on the ground and concerned tenants welcome the intervention as it provides them with the inventory as a pre-condition to negotiate the tenancy land rights securitization; the inventory itself will increase tenure security as it is recognized by the local authorities and all parties concerned (owner, neighbors);

The NLP presents options for the landlords and tenants that can be reached only after negotiations and these include:- buy-out, land sharing and lease arrangements and acquisition of Certificates of Occupancy. Brief descriptions of these are below.

1. Buy-out of the Mailo right over the tenanted portion requires a prior determination of the acreage, location and value of land on the tenanted portion. The entire parcel over which the registered mailo right exists need not be bought-out or extinguished since often times the secondary/tenancy rights may not cover the entire mailo parcel. Similarly, if the tenancy rights were to be registered as an encumbrance on the mailo right, it should be limited to the boundaries of the tenancy parcel. This should allow for unconstrained transactions (sale, mortgage, lease, gift, etc.) on the untenanted portion.
2. In land sharing, tenants can agree to let go a percentage of their acreage in lieu of registerable Mailo interest. Land sharing could only be fairly implemented through a fact-based negotiation. The facts (acreage, location, developments) can only be determined through data capture that does not involve prohibitive costs to the parties involved.
3. The Mailo owner can agree on giving exclusion possession to a tenant over the

portion covered by the tenant for an agreed amount of money for an agreed period of time. This lease agreement would then be registered and a leasehold title issued to the tenant. Proportionate lease premiums and market rate ground rent also require a determination of the tenancy attributes (acreage, location).

4. The landlord and tenant can agree on the tenant acquiring a certificate of occupancy. This requires recognition of the tenant, and prior of the size of the tenanted portion. The tenant then applies for a certificate of occupancy through the landlord and the “Kibanja” is marked by the Area Land Committee. Upon approval by a District Land Board, the certificate of occupancy is issued by the Recorder.

All these procedures require knowledge of the Mailo plot and block numbers and knowledge of the registered owner. This necessitates the records of the tenancy parcel to confirm with certainty on which Mailo parcel(s) the tenancy is situated and consent of the landlord. Only in cases of absentee landlords and absence of administrators of deceased landlords’ estates would this be constrained.

We believe that this approach can be replicated in other places, as the cases of tenants and lords are different in nature. Data capture of tenancy claims gives an opportunity to the parties to negotiate through the options in a transparent way.

ACKNOWLEDGEMENT

We wish to record our thanks to LANDnet who engaged the three of us with the consultancy to develop a private manual tenure handbook . By giving us an opportunity to undertake this work, they found us the best among those who competed. They have also contributed many helpful suggestions and provided welcome advice.

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Peter Mukidi Walubiri - Legal Expert
Dr. Anwar Sadat Nakibinge - Visual Artist

LIST OF ACROYRONMS

ALC	Area Land Committee
ADR	Alternative Dispute Resolution
CAO	Chief Administrative Officer
COO	Certificate of Occupancy
DLB	District Land Board
FC	Final Certificate
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
ILGU	Improvement of Land Governance in Uganda
KCCA	Kampala Capital City Authority
LC	Local Council
MLHUD	Ministry of Lands, Housing and Urban Development
MZO	Ministry Zonal Office
NLP	National Land Policy
PC	Provisional Certificate
RDC	Resident District Commissioner
RTA	Registration of Titles Act
SACCO	Savings and Credit Cooperative Organization

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DEFINITION OF KEY WORDS

Allotment

The allocation of a particular acreage of mailo land to a person under the 1900 Buganda Agreement. The person allocated land is called the allottee.

Bakungu

These were greater chiefs to whom the administration of Buganda kingdom was entrusted

Bataka

This is a collection of clan heads and sub-clan heads in Buganda. Collectively they are called bataka. The land held by each clan head for the clan was called butaka.

Batongole

These were lesser chiefs who rendered services to the Kabaka. Ownership of land was attached to these offices to which the administration of Buganda kingdom was entrusted. This land was called butongole land.

Blue page

This is the original registry copy of un-surveyed and unascertained mailo land. It is one page and blue in colour hence the word blue page. Upon survey, a blue page is converted to a white page.

Bona fide Occupant

A person who has stayed on and used, or improved the land for not less than twelve years before the coming into force the Constitution on 8th October 1995, without being challenged or asked to leave by the owner. Accordingly, that person must have been

occupying the land before 8th October 1983. It also applies to a person who had been settled on the land by government or it's agent including a local authority. A person who has bought or otherwise acquired the interest of a bonafide occupant shall be taken to be a bonafide occupant.

Busuulu

The annual cash payment to a landlord by a tenant for occupation and use a “Kibanja”

Certification

The process of acquiring a document of proof of ownership to land. This can either be a certificate of title or a certificate of occupancy.

Easement

A right enjoyed by the owner of land over the land of another, for example a right of way, a right to a flow of air or water.

Envujjo

This was the payment in kind from the produce from the land by the “Kibanja” holder to the land owner

Executor

A person who implements the wishes of the testator as expressed in the will.

Intestate

A situation where a person dies without leaving a will or where a person dies leaving a will which is not valid in law

Kabaka

This is the traditional king of the Buganda kingdom and also head of the clans (bataka), known as Ssabataka.

“Kibanja”

A parcel of land over which a tenant lives and cultivates his/her food crops.

Lawful Occupant

A person occupying land by virtue of the repealed Busuulu and Envujjo Law of 1928; Toro Landlord and Tenants Law of 1937; Ankole Landlord and Tenant Law of 1937; or a person who entered the land with the permission of the registered owner including a buyer and a person who 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. This tenant is recognized under section 29(1) of the Land Act.

Letters of Administration

The grant by a court of competent jurisdiction authorising a person, called the Administrator, to administer and distribute the estate of a deceased person who never made a will. The Administrator is usually a close family member.

Lukiiko

This is the Great Council of the Baganda. In the earlier years, it had legislative and executive powers of the Buganda Kingdom

Microfilm

A piece of film that has very small photographs of documents on it, so that they can be stored easily and permanently. The microfilms in the Ministry of Lands, Housing and Urban Development are records of the old, closed archived title records.

Namasole

The mother of a Kabaka, the king of Buganda

Probate

The grant by a court of competent jurisdiction authorising the executor named in the testator's will to administer the testator's estate

Search

Is a request made to a registrar of titles to get information concerning registered land.

Such information can be to know the owner, to know the acreage, and to know whether there are any registered claims on the title

Squatter

Somebody who lives on someone's land without permission and without paying rent. This person is an unlawful tenant.

Testate

A situation where a person dies leaving behind a valid will.

White page

This is the original registry copy of surveyed mailo land. It is one page and white in colour hence the word white page.

Will

A declaration by which a person making it (the testator) provides for the distribution or administration of his or her property after death.

1

EVOLUTION OF MAILO TENURE

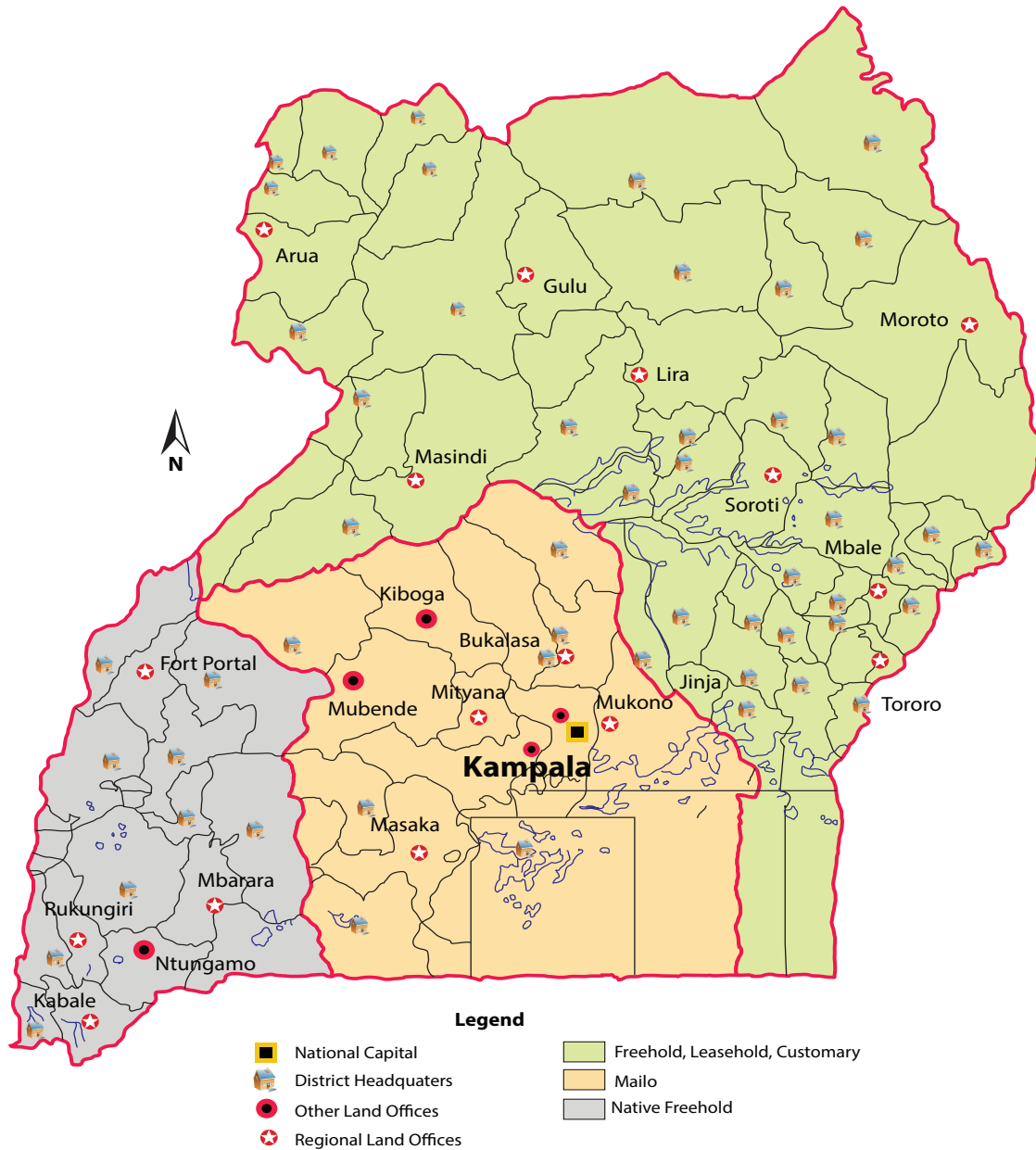
Introduction:

1. The Mailo System of land holding is a unique tenure system only practiced in the districts in Uganda which by 1900 comprised the Kingdom of Buganda. The Mailo tenure System now exists in the Districts of Buganda and Kibale District, which after the return of lost counties to Bunyoro in 1964, no longer forms part of Buganda.
2. Before the 1900 Buganda Agreement, land in Buganda was held under customary tenure. Clan heads and heads of sub-sections of clans exercised rights over land reserved for clans (Bataka land). The great chiefs (Bakungu) and the lesser chiefs (Batongole) exercise rights over lands reserved for their offices. Some individuals exercised individual hereditary rights over land granted to them by Kabaka (Butongole)

The 1900 Buganda Land Settlement.

3. In 1894, Uganda was declared a British Protectorate as part of the partition and colonization of Africa. As part of the consolidation of the protectorate administration and in an effort to make the protectorate self-supporting, a land settlement was negotiated between the Protectorate Government and the Regents who were in charge of the administration of the Buganda Kingdom. This led to the signing of the Buganda Agreement, 1900 between Sir Harry Johnston, Special Commissioner on behalf of Her Majesty the Queen of current Britain and the Regents and Chiefs on behalf of the people of Uganda. This Agreement dealt with several matters of protectorate administration, taxation, military service and others. It also specifically dealt with land.

Map 1: Distribution of Land Tenure in Uganda



4. Under Clause 15 of the Agreement, it was assumed that the entire area of the Kingdom of Buganda comprised 19,600 square miles. This was divided as into square miles, i.e. the Uganda Administration (10,500 square miles), the *Kabaka* (350 square miles), the chiefs, the *Namasole*, the Princes and Princesses, county chiefs, and other Royals (320 square miles), the Regents (96 square miles), Mbogo the head of the Muhammedan faith, the three Missionary Societies, 1,000 chiefs and private landlords (8,000 square miles). The details of the distribution are set out in the table below.

Table 1: Extract from the 1900 Buganda Agreement showing allotment of Land

	ALLOTMENT OF LAND AND ESTATES		Square miles
i	Forests to be brought under control of the Uganda Administration	.....	1,500
ii	Waste and uncultivated land to be vested in Her Majesty's Government and to be controlled by the Uganda Administration	.....	9,000
iii	Plantations and other private property of His Highness the Kabaka of Uganda	.....	350
iv	Plantations and other private property of the Namasole	.....	16
v	Plantations and other private property of the Namasole, mother of Mwanga	.....	10
vi	To the Princes: Joseph, Augustine, Ramazan and Yusufu Suna, 8 square miles each	.....	32
vii	For the Princesses, sisters and relatives of the Kabaka	.....	90
viii	To the Abamasaza (Chiefs of Counties) twenty in all, 8 square miles each (private property)	.....	320
ix	Official estates attached to the posts of the Abamasaza, 8 square miles each	.....	160
x	The three Regents will receive private property to the extent of 16 square miles each	.....	48

xi	And official property attached to their office, 16 square miles each, the said official property to be afterwards attached to the posts of the three native ministers	.....	48
xii	Mbogo (the Muhammedan chief) will receive for himself and his adherents	.....	24
xiii	Kamswaga, chiefs of koki, will receive	.....	20
xiv	One thousand chiefs and private land owners will receive the estates of which they are already in possession, and which are computed at an average of 8 square miles per individual, making a total of	.....	8,000
xv	There will be allotted to the three missionary societies in existence in Uganda as private property, and in trust for the native churches, as much as	.....	92
xvi	Land taken up by the Government for Government stations prior to the present settlement (at Kampala, Entebbe, Masaka etc.)	.....	50
		Total	19,600

5. After the allotment of the 8,000 square Miles to private land holders, there was a balance which the Special Commissioner distributed by note dated 13.10.1900 as follows: -

Table 2: Extract from the 1900 Buganda Agreement showing allotment of Land

	ALLOTMENT OF LAND AND ESTATES		Square miles
xviii	Kabaka		100
xix	Katikiro		26
xx	Mugwanya		23
xxi	Kisingiri		20
xxii	Mbogo		4
xxiii	Namasole		10
xxiv	Lubuga		5
xxv	Abambeja		10
			198
xxvi	Sekibobo	14 all the miles of his Chief	79
xxvii	Mukwenda	14	78
xxviii	Pokino	14	78
xxix	Kangawo	14	57
xxx	Kago	8	42
xxxi	Mugema	18	52

ALLOTMENT OF LAND AND ESTATES		Square miles	
	These amount to	82	386
xxxii	Kaima	9 all the miles of his Chief	31
xxxiii	Luwekula	12	32
xxxiv	Kyambalango	8	22
xxxv	Kiimba	7	14
xxxvi	Kamuswaga	15	5
xxxvii	Kimbugwe	8	22
xxxviii	Lumama	7	13
xxxix	Kweba	6	14
xl	Mutesa	6	14
xli	Mbubi	6	14
xlii	Mulondo	7	14
xliii	Kitunzi	6	14
xliv	Katambala	5	9
xlv	Kasuju	5	9
xlvi	Abamasaza		189
xlvii	All the miles of the Sub-chiefs		613
xlviii	King and his Chiefs		198
xlix	The Bamasaza		189
I	The Sub-Chiefs		613
	The Total		1,000

Identification of the 1000 beneficiaries

- The task of identifying the 1000 actual beneficiaries and the specific areas where their claims should be surveyed was given to the Buganda *Lukiiko* under the Buganda Agreement (Allotment and Survey Agreement), 1913. This agreement was signed by Sir. Fredrick John Jackson, the Governor of the Protectorate and the Regents and Chiefs on 24th August 1913.

7. Provision was made in the agreement for confirmation of allotments and for making of further allotments in case the surveyed land was more or less than what had provisionally been marked out. Time frames were set for the taking up of the surplus or deficient allotment.

Survey of the Mailo Land

8. The *Lukiiko* prepared and confirmed allocation lists of all the claimants. On the basis of these lists, the claimant was issued a certificate of claim by the Governor stating that he or she had obtained land under the 1900 Buganda Agreement. However, in 1902, the Certificate of Claim was replaced by a Provisional Certificate (PC). This Certificate did not define the rights and duties of the person allocated land. Thereafter persons who had been issued provisional Certificates had their land demarcated and surveyed by the Protectorate Government.

Certification of Mailo Land

9. In 1908, a law was enacted to define and govern the Mailo land that was being allotted and surveyed in Buganda. It was the Possession of Land Law, 1908. Under this Law, the Mailo owner held the land in perpetuity and could dispose of it by sale, gift or will. Upon death, the land devolves on to his estate. There were restrictions on disposing of the land to a non-Ugandan except with the Consent of the President and the *Lukiiko*.

The Registration of Land Titles Ordinance, 1908

10. After survey of the land comprised in a Provisional Certificate (PC), the claimant was issued a Final Certificate (FC). These Final Mailo Certificates were subsequently registered under the Registration of Titles Ordinance. The land registered under this law had to be identified by a survey plan. A Mailo Register was opened and the Certificate of Title issued under this register were under volumes and folios. Each volume had 25 Folios.

Registration of Titles Ordinance, 1922

11. The Registration of Land Titles Ordinance, 1908 was replaced by the Registration of Titles Ordinance, 1922, which came in force in 1924 and remains the law

governing land registration in Uganda today. Under this Act, title to land is guaranteed by the Government upon registration of such title. The registration system is under the control of the Commissioner for Land Registration who supervises the Registrars of Title at the various Ministry Zonal Offices.

12. Under this system of title by registration, a legal register in which all titles and transactions are recorded is maintained. The Register has three parts, one of which describes the land (its plot numbers, acreage and location), the other records the owner of the land while the third part records the claims of other persons to that land (incumbrances). Each certificate of title has to have a survey plan describing the boundaries of the land. A copy of a Certificate of Title is attached hereto as annexure "C"
13. The Act provides for different forms of the registers (certificate of title). The main two types are registers based on blocks and plots and the other is the one based on volumes and folios. When mailo land was first registered under this new register, the titles issued were those under the volume and folio system. The land which was previously registered under the 1908 register was brought on to the new register. That process entailed closing the 1908 register by issuing new certificates of title to the person who held certificates under the old register. Accordingly, certificates issued before 1924 are no longer legal.
14. The office of titles keeps the original certificate of title to the land that is popularly called the "white page" while the owner of the land is issued a duplicate certificate of title which is popularly called the owner's copy. When the original certificate of title is lost, the Registrar of Titles can replace it with a substitute certificate of title. If the owner of the land loses his duplicate certificate of title, the Registrar of Titles, upon application by the land owner and publication of a thirty-day notice in the gazette, issues a special certificate of title to replace the lost duplicate certificate of title.
15. All certificates of title must be signed by the Registrar of Titles and must be sealed with the official seal of the office of titles. To reduce on the incidence of fraud, each office of titles now has a seal which is identical to that specific office. Copies of the Registry and owners Certificates are attached as annexure "C.1 and "C.2".

Conversion from Volume/Folio to Block/Plot

16. Initially, the land register was based at Entebbe. As more and more land was brought onto the register, it became necessary to open branch offices at Kampala, Mukono, Bukalasa, Masaka, Mityana, Mbarara, Kabale and Fort portal. The system of maintaining the register on the basis of volume and folio became inconvenient in view of the decentralization of the register. Secondly, the numerous sub-division of mailo land also entailed cumbersome opening hundreds of volumes and folios of the register.
17. In view of these developments, a decision was taken in the late 1940s to convert the register to blocks and plots that more conveniently correspond with the territorial location of the land. Accordingly, the certificate of title (both original and duplicate) were converted to block and plot and the volume and folio based duplicate certificate of title withdrawn from circulation and cancelled. This exercise continued up to just before independence in 1962. Except for seven (7) blocks (Kyadondo Blocks 78 at Banda, 148 and 149 at Wamilongo, 186 at Namavunda and 213 at Bukoto; Busiro Block 204 at Kakiri and 476 at Bulwanyi) which were not fully converted due to survey discrepancies, all mailo land in Buganda was converted to the block and plot title systems and any volume and folio duplicate titles in circulation are not legally recognized.

Microfilm Records

18. In an effort to preserve the history of land dealings and specially to keep a disaster copy, the titles records were microfilmed. This exercise microfilmed all existing certificates of title before conversion from volume/folio to block and plot and did not continue beyond 1962. That explains the fact that there are no microfilm records of block/plot titles.
19. Since the microfilmed records were updated only up to 1962 or thereabout land transactions registered thereafter are not captured. The microfilm is accordingly not an up-to-date status of the register. Any person who wishes to know the up-to-date status must search the current block/plot register.

Blue Pages

20. Although the original certificate of title kept in the titles office are ordinarily white (hence the common reference to white pages) some original certificates of title are blue (blue pages). Where they still exist, this denotes that such a parcel of land has not been finally surveyed. This situation was occasioned by the delay to complete the mailo survey after the allotment in the first three decades of the 20th Century.
21. Owing to the delay in completing the survey for the original allottees of mailo land, several died before getting their final mailo certificates. The *Lukiiko* had to determine the successors of this land and in several instances, it required a sub-division of the original allotment. Secondly, several allottees and beneficiaries started selling part of their allotment or inheritance. In the end, these beneficiaries and purchasers started registering claims as to a certain acreage of the title.
22. Since the sub-division into smaller parcels had not been surveyed, no survey plan could be issued and signed. Accordingly, no certificate of title could be issued. To deal with this unpleasant situation, provision was made in the Registration of Titles Ordinance to allow issue of certificate of title to unascertained parcels (un-surveyed). These are the blue pages. In practice, you would have say 20 claims on one piece of land, identified as one plot or a group of plots. Several persons each claiming a specific acreage would be registered as proprietors in respect of their claim on that one plot or group of plots. You would then end up with a group of blue pages referring to the same plot number or a group of plots but indicating different proprietors. In most cases these various proprietors were already in occupation of their claimed part. Upon survey of the specific part, the blue page is cancelled and a white page for the specific parcel issued. The proprietor is then also issued an owner's copy of the title. If one is seeking to buy land still registered on a blue page, special care should be taken to confirm that this land exists on the ground and there is no white page for it or other rival claimant.

1975 attempted abolition of mailo land

23. In 1975, there was an attempt to radically change the land tenure system in Uganda. Under S.1(1) of the Land Reform Decree, all land in Uganda was declared to be public land centrally vested in the Uganda Land Commission. Under S.2 of the decree, all mailo land and freeholds were abolished and

automatically converted into leaseholds of 99 years in case of individuals and 199 years in case of public bodies. These converted leaseholds were to be subject to development conditions in accordance with the zoning scheme of each area.

24. In spite of these radical legislative changes, nothing was done to implement the decree. The land registry did not physically convert the mailo certificates of title into leaseholds and continued to entertain land transactions on the basis of the existing mailo register. The Government did not make any zoning scheme and as such no development conditions were ever enforced on these “leases on conversion”. This remained the position till the promulgation of the Constitution of the Republic of Uganda in 1995.

Revival of Mailo land by the 1995 Constitution.

25. There was a heated debate during the collection of peoples’ views by the Constitutional Commission (1988-1993) headed by Justice Benjamin Odoki. This debate continued during the Constituent Assembly deliberations. In the end, article 237(1) of the Constitution reverted the ownership of land to the citizens of Uganda “**to vest in them in accordance with the land tenure systems provided for in the Constitution**”. Among the recognized land tenure systems is Mailo. This Constitutional provision now clarified the status of mailo land which had been thrown in doubt by the Land Reform Decree, 1975.
26. However, the return of Mailo land was also accompanied by the introduction of a new concept of “lawful” and “bona fide” occupants which are the subject of chapters 3, 4, 5 and 7 of this book. These occupants are statutory tenants on mailo land. But it is acknowledged in paragraph 43 of the National Land Policy, that the landlord- tenant relations between the mailo owner and tenant is not amicable or harmonious. It is Government policy to resolve and disentangle the multiple, overlapping and conflicting interests and rights on mailo land (paragraph 44 of the National Land Policy).

2

MAILO LAND TENURE ADMINISTRATION

Introduction

27. From the account in Chapter one above, the initial mailo owners were not more than 1300 people, who were mostly royals, chiefs and private land owners. Over time, hundreds of thousands of people have acquired Mailo land. While the original owners of mailo were exclusively Baganda, over the decades, hundreds of non-Baganda have acquired and continue to acquire mailo land. In this Chapter, the acquisition and registration of interests in Mailo land is explained.

Various forms of acquisition of mailo land

28. As already indicated, several of the original owners did not live to have their allocations surveyed and titled. This gave rise to the first group of people who acquired mailo land through succession. However, many got their Certificates of Title and dealt with their land while still alive by way of sale or gift. In this part, we shall deal with the various ways in which one can acquire Mailo land.

Succession to Mailo Land

29. When a person who owns Mailo land dies, members of his or her family may succeed to that land based on the law of succession in Uganda. The persons entitled to a share include the widow or widower, the children irrespective of sex and other dependant relatives. In chapter five, we discuss in detail the law and processes of succession to mailo land.

Purchase from Registered Proprietor

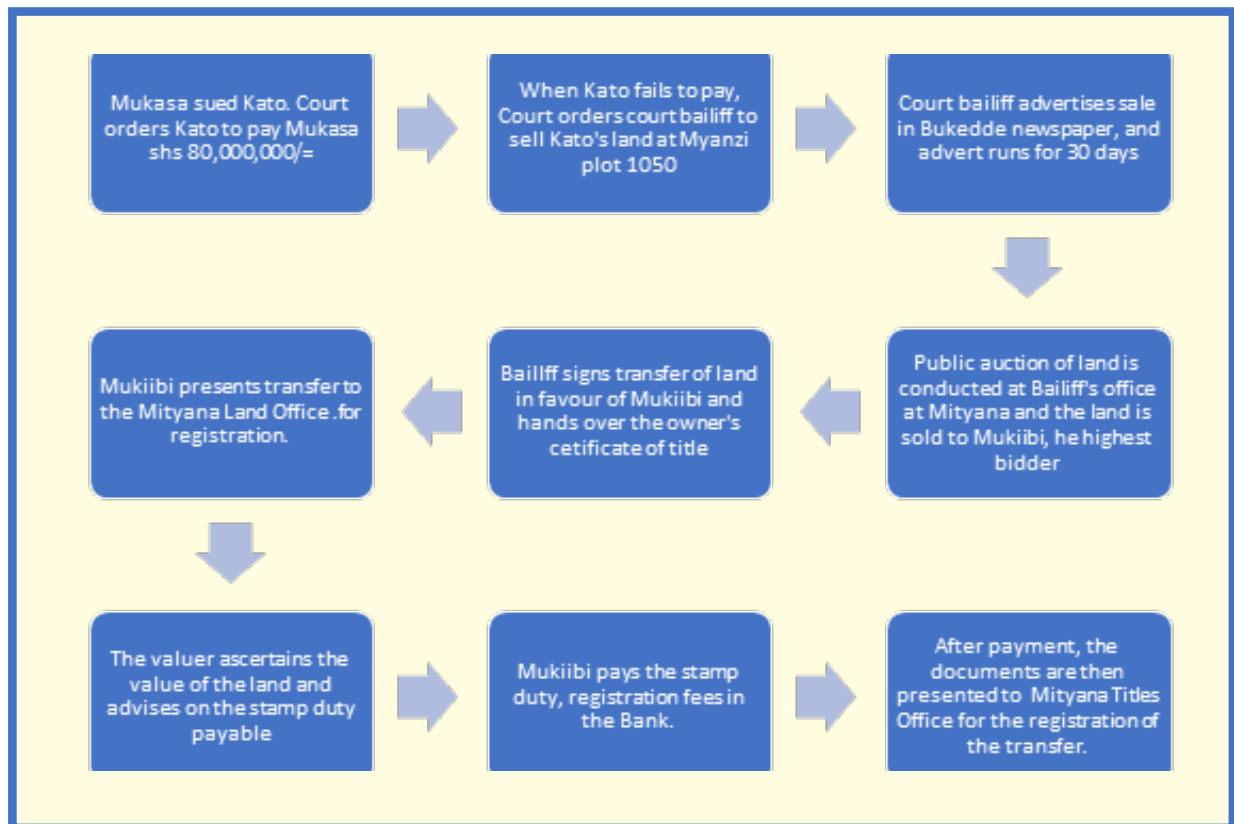
30. This is the most common type of change in ownership of mailo land. It is voluntary in nature. The transfer is made by the registered owner of the mailo signing a transfer form in favour of the purchaser. The transfer may also be signed by a person authorised in writing by the registered owner (attorney). Similarly, the person to whom the land is sold or transferred (transferee) or his or her attorney must also sign this transfer. Both the seller and the purchaser must sign in the presence of an authorized witness. There is also now a requirement that both parties furnish passport photographs to the Registrar of Titles. If the purchase is for only part of the land, the owner will also have to sign a mutation form to authorise a surveyor to survey off the part that has been sold.
31. It is a requirement under S. 92 (1) of the RTA that the consideration for the transfer be described. If the consideration is money, its amount should be disclosed in the instrument of transfer. Where the consideration is not money the true consideration must be stated. For example, the consideration may be “eight cows”, “exchange with Plot 20 Katawa LC 1A Mubende” or “natural love and affection”.
32. It is permissible for the registered proprietor to transfer to his or her spouse. The proprietor may also transfer to himself or herself and to another or other persons. In this way, the proprietor creates common owners where the land is owned by more than one person. The share of each of the co-owners will be set out in the transfer, for example “ David Mukasa as to one third, Mrs Jane Mukasa as to two thirds”.

Purchase from Court

33. When a court of law decides a case between parties, it may order the losing party (judgment debtor) to pay a sum of money to the successful party (judgement creditor). If the debtor fails to pay, court may order the sale of his or her property by an officer of the court known as a bailiff. After such sale, the property can be transferred by the bailiff to the purchaser.

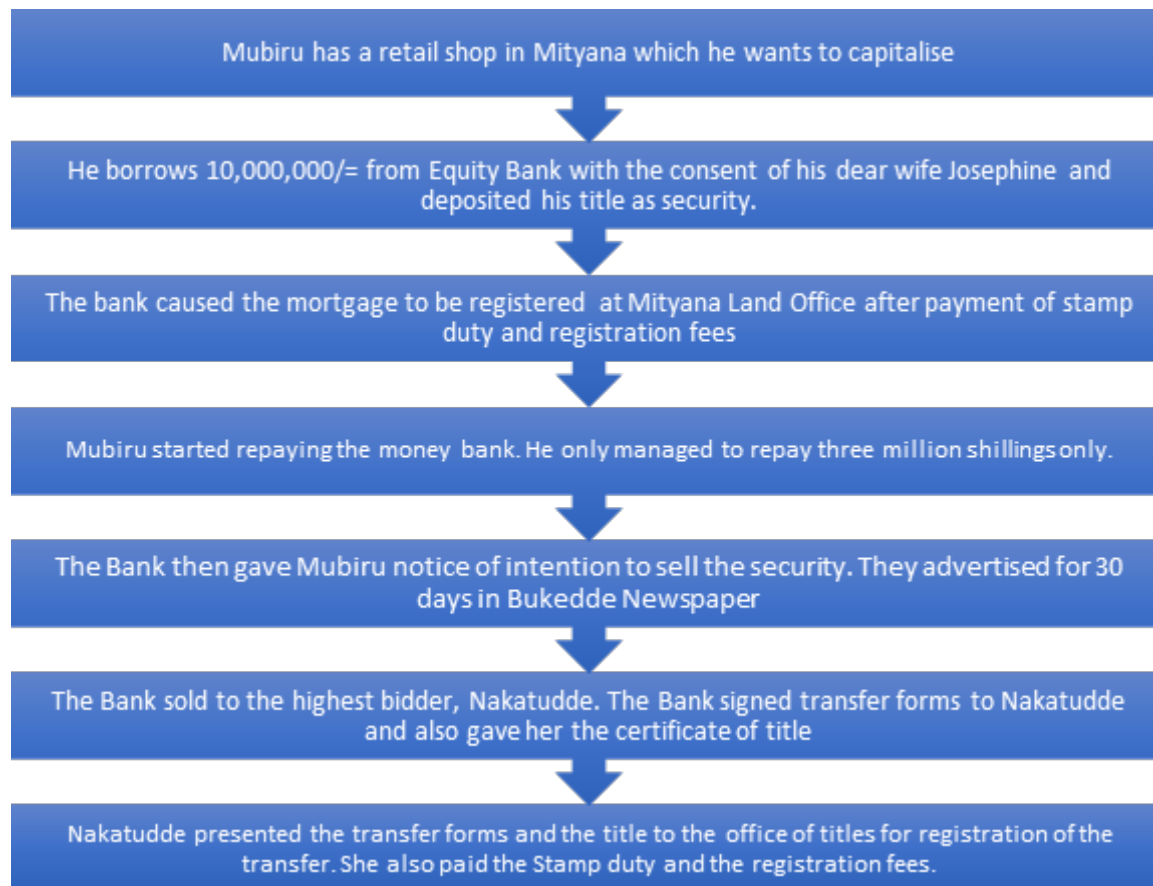
34. There are a number of steps that have to be followed to complete the attachment and sale. When a property is attached in execution, the court issues to a bailiff an order of attachment and sale. Normally before the sale, the court bailiff will advertise the land for sale in a newspaper for thirty days. The sale will be conducted at a public auction. The property will normally be sold to the person who offers the highest amount at the public auction. After the sale, the bailiff signs a transfer in favour of the purchaser and hands over the certificate of title to him or her to enable the registration of the transfer with the Registrar of Titles

Figure 1: Purchase from Court



35. A mailo owner can borrow money and offer his or her land as security for repayment of the loan. Such a transaction is called a mortgage. The mailo owner as borrower is called the mortgagor and the lender is known as the mortgagee. Where the mortgagor fails to repay the money, the mortgagee may sell the mortgaged land to recover his or her money⁶. The Mortgagee has to execute a transfer of the mortgaged land to the purchaser as required by S.28(3) of the Mortgage Act.

Figure 2: Purchase from a Mortgagee



Purchase from a Trustee in bankruptcy

36. It is possible for a mailo owner to incur debts with people he trades or deals with. An example is Musisi may start a business of a private boarding school. He then gets people to supply him with food, firewood, books, a school bus and he has to pay for water, electricity, salaries for teaches and other staff. If he fails to pay these suppliers and staff, they may apply to court to declare him bankrupt (S.20(1) of the Insolvency Act No.14 of 2011). If court declares Musisi bankrupt, it appoints an officer called a Trustee in bankruptcy to take over the assets of Musisi for management.

37. The trustee has powers to collect, realize and distribute the estate of the bankrupt. Part of the process of realization involves sale of the property of the bankrupt which may include mailo land. The trustee upon such sale can sign a transfer of the mailo land in favour of the purchaser which is then registered by the registrar of titles.

Purchase of mailo land from a liquidator

38. A company, the majority of whose members are citizens of Uganda can own mailo land. When such a company is unable to pay its debts, its properties including Mailo land can be sold by a person appointed by court (liquidator) under S. 99(1) of the Insolvency Act. Such liquidator is empowered to sign a transfer in favour of a Purchaser. The Purchaser should satisfy himself that the liquidator was duly appointed by Court and that the property belongs to the insolvent company.

Registration of a gift

39. A registered proprietor of mailo land can give it as a gift to any other person. A person giving the gift is a donor and the person receiving the gift is a donee. For such a gift to be recognized, it is necessary for the donee to obtain evidence of such gift. The best evidence is a signed transfer which can be registered. Where there is no signed transfer, the donee should at the very least take possession before the donor's death.

Gift of land



40. Upon proof of such donation the administrator or executor the of the donor's estate can be called upon to sign a transfer in favour of the donee. If the administrator or executor refuses to sign, then the donee can apply to court to order the transfer of title.

Registration of a gift



Responsible Public Offices or Institutions

41. In the course of acquisition of Mailo land, a number of public offices are involved and it is necessary to briefly state their roles here.

Ministry Headquarters

42. Matters of land are the mandate of the Ministry of Lands, Housing and Urban Development. At the Ministry, there are three Directorates; that of Housing, Physical Planning and Land Management. Under the Directorates, there are several departments, headed by Commissioners, dealing with specific aspects

of land management. The department of Surveys and Mapping, of Land Administration, Land Registration and Valuation are under the Directorate of Land Management. The department of Physical Planning and Land Use Compliance are in the Directorate of Physical Planning, while the Department of Housing and Human Settlement are in the Directorate of Housing. These various department sets standards and supervise the respective district officers. **The organisational structure of the Ministry is attached as annexure “A”**

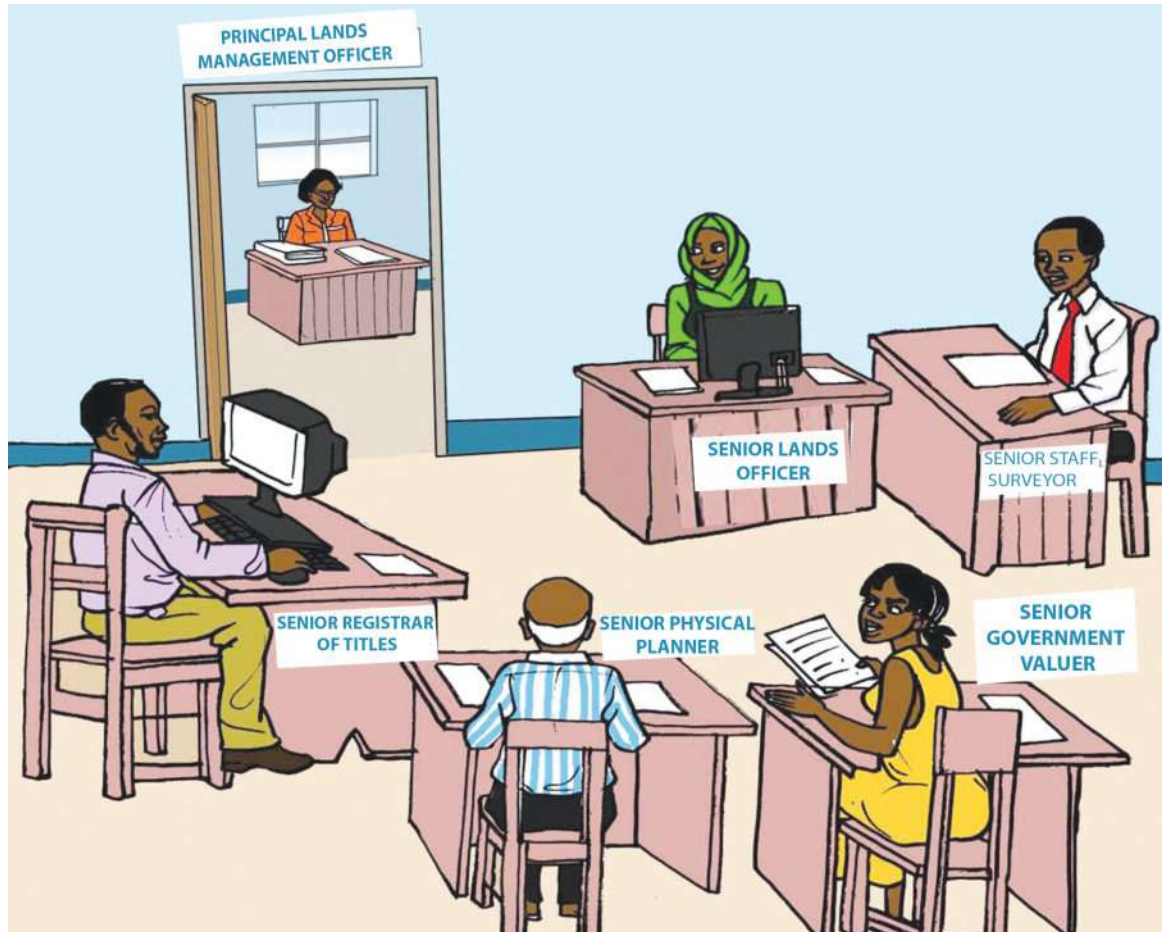
Office of the Chief Administrative Office

43. The Chief Administrative Officer (CAO) is the Supervisor of all civil servants in the District. He is the most senior technical officer who advises the District Council on land policy and administration. He links the District Land Board, the District Titles Officer and the District Survey Office to the political administration in the District.
44. In cases of administration of estates of deceased persons, the CAO or his assistants help in the organization of family meetings to determine who can apply for Letters of Administration to manage the estate of the deceased. This office works closely with the office of the Administrator General.

Office of the Administrator General

45. This is an important office that has important functions in the administration of estates of deceased persons. Where a person dies without leaving a will on how to manage his or her estate, the Administrator General, unless there is a widow or widower to manage the estate, has to give a Certificate of no Objection to the person seeking to apply to administer the estate. Normally the family will report the death to the Administrator General who will in turn request the CAO of the area to hold a family meeting to select suitable persons to be granted a Certificate of No Objection to administer a deceased's estate.
46. The office of the Administrator General is also a depository of old records from the Buganda Lukiiko relating to administration of estates that relate to the period before 1967. It is a useful reference point when looking for records of estates distributed by the Lukiiko before 1967.

Ministry Zonal Office (MZO)



47. Land management services have been decentralised from the Ministry headquarters to zonal offices. A zonal office services a couple of districts as a one stop centre for land administration, valuation, physical planning, surveying and registration. MZOs have been set up at Mukono, Kampala (KCCA), Jinja, Wakiso, Mbarara, Masaka, and Kabarole. Currently other Ministry Zonal offices have been opened at Kabale, Jinja, Lira, Masindi, Kibaale. Others are to be opened in Moroto, Tororo, Mpigi, Luwero, Mityana, Soroti, Kabale and Rukungiri.

Office of the District Physical Planner

48. All land in Uganda has to be planned under the law before it is surveyed, titled and developed. At the district level, the district planner together with the physical planning committees are responsible to give planning comments to approve a survey, tilting and development of any land, including mailo land, according to the planned zoning scheme. The specific functions of the District Physical Planner are:
- ✓ Acts as Secretary to the District Planning Committee,
 - ✓ Spearhead the production of the District Physical Plan,
 - ✓ Prepares local plans in conformity with the national physical development plan
 - ✓ Approves the proposed scheme of sub-division of Mailo land before the survey

District Titles offices

49. All land titles and relevant records relating to land in specific areas are held at District Titles Offices. If a person wishes to purchase land or carry out any other transactions on mailo land, the person must of necessity deal with the titles offices at KCCA, Mukono, Bukalasa, Mityana, Masaka, Wakiso or Fort portal. One of the main functions of these offices is to facilitate the public to [search](#) the Land Register. Under S.201 of the RTA any person is free upon payment of a fee (now Shs. 10,000) to search the Register. This involves a physical inspection (reading) of the register (white or blue page) and if necessary any instruments. The person making a search can also request for a written search report. The report has to be signed by a Registrar of Titles.
50. The other main function of District Titles Offices is to issue Certificate of Titles and to register land transactions. Accordingly, persons who have acquired interest in mailo land have to have their transactions, including transfers registered by the District Titles Offices. Relevant forms for consent to transfer, and transfer forms themselves are available at these offices. The specific functions a Registrar of Titles are:
- ✓ To register land and issue certificates of titles

- ✓ Maintain and keep the register book
- ✓ To assist persons making searches and issue search reports regarding information on registered land
- ✓ To register various land transactions including transfers to beneficiaries, transfers to purchasers, mortgages to banks and individuals,
- ✓ Register caveats of people claiming interest in land,
- ✓ register court orders,
- ✓ register leases and issue leasehold certificates of title,
- ✓ register executors and administrators of deceased persons,
- ✓ register release and withdrawal of caveats,
- ✓ register release of mortgages,
- ✓ Issue special certificate of title where the owners' copy is lost or obliterated
- ✓ gives legal advice to government and the public
- ✓ Attends court to give evidence regarding registered land
- ✓ Attends to court to defend actions of the office of titles

District Survey Office

51. Attached to each District Titles Office is the Survey Office. This is responsible for the survey of land in the District. All surveys of mailo land including sub-divisions have to be authorized by the District Staff Surveyor, through issue of instructions to survey. The specific functions of a district surveyor are:

- ✓ Gives out instructions to survey
- ✓ Receives and examines survey records as done by a field surveyor
- ✓ Approve survey of a field surveyor
- ✓ Maintain and keep the survey records
- ✓ Prepares, signs and issues survey plans(prints)
- ✓ Forwards the prints to the registrar of titles for issuance of title

52. The District Survey Offices also keep important records including the Kalamazoo were a history of the creation and sub-division of plots is kept. It is from this Kalamazoo that the information in area schedules showing the history of specific plots is obtained. One can also obtain maps and extracts of maps from District Survey Offices.

District Land Office



District Land Officer

53. There is a District Land Officer for each District who is the technical officer who advises the District Council, the District Land Board and the public on the management of land in the District. With regard to Mailo land, applications for CCO's that are submitted to the DLB are processed by the Land Officer

District Land Board

54. Under article 240 of the Constitution provision is made for a Land Board for each

District in Uganda. The Board is charged with several functions under article 241 of the Constitution namely:

- a. To hold and allocate land in the District which is not owned by any person or authority;
- b. To facilitate the registration and transfer of interests in land; and
- c. To deal with all other matters connected with land in the District in accordance with laws made by Parliament
- d. With regard to Mailo land, a DLB approves the issuance of a CCO and forwards the approval to the Recorder

Area Land Committees

55. Under S.64 of the Land Act as amended by Act No.1 of 2004, area Land Committees are established for each Sub-county or Division to assist Land Boards in an advisory capacity. In relation to mailo land, the Area Land Committee assist the District Land Board in ascertaining boundaries of occupants who have applied for certificates of occupancy.

Recorder

56. The office of Recorder is established at each Sub-county, gazetted urban area and each division of a city under S. 68 of the Land Act. The respective Sub-County Chief, Town Clerk or Assistant Town Clerk of the area acts as the recorder. Among the functions of the recorder are to issue certificates of customary ownership and to register dealings with certificates of occupancy.

Local Council I, II and III

57. Although there is no specific role in the Land Act giving any specific responsibilities to Local Councils regarding land management, these local councils play a supportive role to other institutions and offices. For example, they assist in identification of the mailo owners and their successors, identification of the occupants and their successors, assist in confirmation of boundaries, and in mediation of disputes. Secondly the LC II courts serve as courts in matters of conversion or damage to property, trespass and disputes relating to customary tenure. LC III is the appellant court from decisions of LC II.

3

LAWFUL AND BONAFIDE OCCUPATION

Evolution of tenants by occupancy

58. In chapter one, it is shown how mailo land was granted with tenants in occupation. Even after allocation, mailo owners encouraged tenants to settle on their land so that they (the mailo owners) get increased payment of the *Busuulu* and *Envujjo*. Overtime, the Mailo owners increased the amount of *Busullu* and the quantity of *Envujjo* payable. This caused dis-harmony between landlords and tenants. The tenants started agitating for reform. The colonial government responded to this crisis by enacting the *Busuulu* and *Envujjo* law of the 1928. Under this law, restrictions were imposed on the amount of *Busuulu* and the quantity of *Envujju* to be collected by Mailo owners. Tenants were also given security of tenure since they could only be evicted for non-payment of Busuulu or where they abandoned their bibajja.
59. In 1975, the Land Reform Decree was enacted. Under this law, the system of holding Mailo land was abolished and Mailo converted into leases of 99 years. The former bibanja holders were converted into tenants at sufferance, whose tenancies could be terminated anytime. Similarly, the payment of Busuulu and Envujjo was abolished. However, these tenants and their descendants are still in occupation of their *bibanja's*. The abolition of Mailo land was followed by a period of uncertainty regarding acquisition, inheritance, purchase etc. of *bibanja's*. This period saw the increased and unregulated settlement on *bibanja's* and expansion by way of opening up fallow land. By the time of the enactment of the 1995 Constitution, there was need to put in place a legal framework to regulate

the occupation of registered land by people who had no registered interest. This is the background to the concept of lawful and bona fide occupants.

60. The concept of lawful and bona fide occupants was introduced in our law by the 1995 Constitution under Article 237(8). The Constitution further provided that Parliament makes a law within two years of its first sitting, to regulate the relationship between lawful and bonafide occupants and also to provide for the acquisition of registration interests by the occupants.
61. Occupants faced possible evictions by land owners when they needed their land for economic development. The Constituent Assembly in deliberating the Constitution were mindful of such massive evictions and put provisions to avoid such social unrest. In compliance to this Constitutional Order, the Land Act was enacted on 2nd July 1998 and has provisions for the definition of lawful and bonafide occupants on registered land, and their relationship with the registered owner. These are in Part 1, sections 29 to 38A.

Lawful Occupant

62. It is important for a person claiming to be a Lawful Occupant to have copies of the tickets of the Busuulu and Envujjo paid to the registered owner or agent of the registered owner before 1975. A successor of a lawful occupant is taken to be a lawful occupant.

Bona fide Occupant

63. It does not include any person on land on the basis of a license from the registered owner or a person who has occupied and utilized or developed any land unchallenged by the registered owner of the land or his/her agent, for a period less than twelve years, from 9th October 1995. This tenant is recognized under section 29(2) of the Land Act.

Kiwanuka is the registered owner of 640 acres of Mailo land in Kyanamukaaka in Masaka. Kiggundu entered and occupies part of this land, about 5 acres in 1970, and has stayed there since, unchallenged by Kiwanuka. This means that by 1995, Kiggundu had stayed on the 5 acres for 25 years and clearly qualifies as a bonafide occupant

This is an example of a person who does qualify as a bonafide occupant

This is an example of a person who does not qualify as a bonafide

On the other hand, Kiggundu's neighbour, a one Mukasa, entered and occupied his "Kibanja" in 1986 without the consent of Kiwanuka. By the time of the promulgation of the 1995 Constitution, Mukasa had occupied the "Kibanja" for only 9 years, and does not qualify as a bonafide occupant on Kiwanuka's land.

Definition of Licensees

64. A person who occupies land with the permission, authorization, pass, ticket, warrant or allowance of a registered owner is a licensee. A license is usually for a specific period of time/duration and for specific activities. Examples of a licensee are hotel guests, house rental tenants, seasonal plant tenants, a lessee. Licenses to land are created by way of an agreement between the registered owner and another person. Examples of such agreements are tenancy agreement, lease agreements and rental agreements.

Definition of Trespassers/Squatters

65. Any occupant on registered land, who does not qualify as a lawful or bona fide Occupant or a Licensee, is a trespasser and or squatter. This is a person who

unlawfully enters/invades/encroaches and occupies land of another without permission. Such a person is one that does not qualify as a Lawful or Bona fide Occupant or a Licensee. Such a person is an intruder.

Acquisition of Tenancies on Mailo Land

Succession

66. The law governing succession and inheritance in Uganda is in Chapter 162 of the Laws of Uganda. It is a general principle worldwide that when a person dies, he or she is succeeded to. Upon the death of a registered owner of Mailo land or the death of a tenant, his or her beneficiaries are entitled to succeed to the land or “*Kibanja*” according to the wished of the deceased as left in a will, or according to the law of succession. More details on the process of succession are contained in Chapter five.

Purchase

67. A tenancy on Mailo land can also be acquired by purchase from the “*Kibanja*” owner. However the Land Act requires that the Mailo owner should give consent to such a purchase. Since Mailo land is all registered, it is important for the purchaser to ascertain the genuineness of the title where the “*Kibanja*” falls. The following steps should be followed:
 - a. Get the particulars of the title of the Mailo land on which the “*Kibanja*” which you intend to buy falls. The particulars include sub-county, village and plot number.
 - b. Check at the office where the land is registered. For Mailo land title in Mityana and Mubende, you check at the Mityana Ministry Zonal Office. You will be required to pay an official search fee of 10,000/- plus a bank charge. This money should be paid in the bank.

Request for a search



Paying for the search



- c. It is also good to verify the sellers' identity by checking his or her national identity card and making inquiries with the Local Council Officials
- d. Ascertain the boundaries of the "Kibanja" with the assistance of the neighbours, local council officials and elders.

Receiving a Search Report



- a. Obtain copies of the agreements and other documents showing the “*Kibanja*” ownership.
- b. Once satisfied about the ownership and boundaries of the “*Kibanja*”, the buyer should require the seller to obtain the written consent of the Mailo owner, before the sale of the “*Kibanja*” can be concluded.
- c. The buyer and the seller then write and sign an agreement of purchase. The agreement should specify the terms of the sale on matters like purchase price, payment. It is advisable to have witnesses.

- d. After the agreement is concluded, the seller should hand over possession of the “*Kibanja*” and introduce the purchase to the neighbors’, Local Council leaders and the Mailo Owner.
- e. If the purchase is for part of the “*Kibanja*”, the seller and buyer should demarcate the portion by planting boundary marks in the presence of neighbours, LC’s and other witnesses.

Gift

69. A gift is a gratuitous grant or transfer of property. For a gift of “*Kibanja*” to be valid, there must be an intention to give followed by change in possession. The “*Kibanja*” owner can donate it or part of it as a gift to any person, subject to the consent of the Mailo owner. Just like acquisition by purchase, the recipient of a gift must make a search and ascertain the ownership of the Mailo land, must investigate ownership of the “*Kibanja*”, and must require that the “*Kibanja*” owner has obtained written consent of the Mailo owner. It is good practice for the donation to be confirmed in writing and witnessed.
70. If the gift is for only part of the “*Kibanja*”, the giver, called donor and the recipient of the gift, called donee, should demarcate the portion by planting boundary marks in the presence of neighbors, LC’s and other witnesses.

Termination of Tenancies on Mailo Land

71. The tenants by occupancy on mailo land are a historical creation and are now statutory tenants. Once created, it does not mean that this situation must last forever. It can terminate any time by conversion, abandonment or breach.

Purchase of mailo

72. Under section 36 of the Land Act, the registered owner of land and the tenancy by occupancy may mutually agree on the determination of the occupancy by sub-dividing the land and each having exclusive ownership and occupation of the different portions of the land. The agreement may include surrender and or purchase by other party of the interest of the other. When the registered owner

buys the interest of the tenant by occupancy, then the occupancy is terminated. The details are in chapter 4 under options on way forward for landlords and tenants.

Negotiation between the landlord and the tenant



73. Equally so, when the tenant acquires the registrable interest of the registered land, either under mutual agreement under section 36 or applying to the landowner with the assistance of a mediator under section 38, then the tenancy by occupation is terminated.

Tenant gives land owner conditions for sharing the land



Measuring and Planting of boundary marks



Celebration upon registration



74. Section 38(2) provides that a tenant by occupancy may apply to the registered owner for permission to convert his or her tenancy. The land owner may grant his or her consent with or without conditions, or reject the application outright, or invite the tenant to enter into negotiations. It is up to the parties to reach an agreement, but either party may invoke the assistance of a mediator to bring them to a settlement. There is no right of appeal by the tenant provided in the Land Act.

Abandonment

76. In law, to abandon land means to give up all claim in relation to it with no intention of ever again asserting, claiming right, or interest over it. Abandonment can be voluntary or involuntary.



77. For voluntary abandonment, a tenant by occupancy can voluntarily inform the registered owner of his/her intention to abandon and actually leaves the “*Kibanja*” for good. The tenant by occupancy may also just leave the whole land unattended by himself or herself, or family member or agent for a period of three or more years. When a tenant voluntarily abandons or deserts his or her occupancy, the occupant may remove any structure placed by him or her on the land, but not trees and dams. However, he /she may not claim any compensation for the loss of the occupancy.

78. Involuntary abandonment is provided for under section 37(4). This occurs in urban areas where an urban/town or city council condemns a tenant by occupancy's building or orders the building to be demolished. In such instances, the tenancy does not extinguish. However, the land owner and the tenant can amicably come into an agreement on terminating the tenancy by compensating the tenant by a sum as determined by a government valuer.

Termination by Breach/Forfeiture

79. A tenant by occupancy is supposed to pay to the registered owner an annual nominal ground rent as is determined by a relevant District Land Board and approved by the Minister. This is provided for under section 31(3) as amended by Act 1/2004 of the Land Act. Some district land boards were vigilant and proposed fees to the minister for approval. Others never proposed fees payable. The Minister, by powers granted under the law, set fees for all land, under a Statutory Instrument; The Land (Annual Ground Rent) Regulation, No. 55 of 2011

80. Currently, the fees payable is categorized based on the location of the land; in municipality, town council, town board or rural area. They are set out in the table below:

Table 3: Approved Annual nominal ground rent determined by district land boards

NO	District	Municipality	Town Council	Town board	Rural Area
1.	Abim		20,000=		5,000=
2.	Amolatar		30,000=		5,000=
3.	Amuru		20,000=	20,000=	5,000=
4.	Hoima		30,000=		5,000=
5.	Isingiro		30,000=		5,000=
6.	Kabarole	30,000=	10,000/=		5,000=
7.	Kamwenge		20,000=		5,000=
8.	Kaliro		30,000=		5,000=
9.	Koboko		10,000=		5,000=
10.	Kyenjojo		10,000=	10,000=	5,000=
11.	Lira	30,000=	20,000=		5,000=
12.	Luwero		20,000=		5,000=
13.	Masaka	12,000=	10,000=		5,000=
14.	Nakaseke		30,000=		5,000=
15.	Namutumba		30,000=	10,000=	5,000=
16.	Ntungamo		30,000=	30,000=	5,000=
17.	Oyam		20,000=		5,000=
18.	Pallisa		30,000=		5,000=
19.	Rakai		30,000=	20,000=	5,000=
20.	Sembabule		20,000=	15,000=	5,000=
21.	Sironko		30,000=	30,000=	5,000=

Table 4 : Annual nominal ground rent for areas where the District Land Board has not determined the rent payable Under Section 31

Land within a city	Land within a municipality	Land within an urban council	Town board	Land within a rural area
50,000=	40,000=	30,000=	20,000=	5,000=

81. The rent payable is standard as provided, irrespective of the size of the land. A person holding one acre of “*Kibanja*” pays the same with that who holds five acres of “*Kibanja*”, the rent payable is the same. The only difference is the location as per urban zoning; i.e. in a city, municipality, urban council, town board or rural area. The rent payable is revisable every five years [section 31(8) of the Land Act].
82. When a tenant by occupancy defaults in payment of ground rent for a period exceeding two years, the registered owner is entitled to serve on him/her notice to show cause why the tenancy should not be terminated. The notice must be in a prescribed form and a copy forwarded to the relevant land committee. If the tenant disputes the notice, he or she may refer the matter to a land tribunal within a period of six months after the date of service. Where the tenant does not challenge the notice within the prescribed period or pay the outstanding rent within a period of one year from the date of the notice, then the land owner may apply to the land tribunal for an order to terminate the tenancy for non-payment of rent.

Notice to tenant of non - payment of rent



83. The tribunal or court, in coming up with a decision, is supposed to examine the circumstances surrounding the tenant's failure to pay rent, ascertain whether the tenant is lawful or bonafide or a mere trespasser, and whether the applicant is the registered proprietor or his agent and whether he or she is not in breach of the tenant's rights.

4

RIGHTS AND DUTIES OF LANDLORDS AND TENANTS BY OCCUPANCY

Rights of Mailo Owner

84. A registered owner has the following rights:
- a. He or she owns the land forever.
 - b. Can lease, mortgage, pledge or sell the land.
 - c. Can sub-divide the land for purpose of sale or any other lawful purpose.
 - d. May pass on the land to any person by will, gift or sale.
 - e. A right to yearly payment of rent from tenant(s) who are legally on his/her land.
 - f. A right to demand for the rent from the tenant by occupancy where there is delay exceeding two years or more in payment.
 - g. A right to apply to court and get an order of eviction where the tenant is in breach of payment of the yearly rent.
 - h. A right of first option to purchase the interest of a tenant by occupancy.

Duties and Obligations of Mailo Owner

85. A registered owner has an obligation to take all steps necessary to know and document the tenants on his/her land. Prior to the promulgation of the 1975 Land Reform Decree, mailo owners, particularly having bug chunks of land, had agents or caretakers (omusigire) who used to help them in this.
86. A registered owner has a duty to receive the yearly rent from the tenant and give him/her a receipt of payment.

Land owner receiving receipts of paid rent to agent



87. A registered owner has a duty to leave the tenant peacefully enjoy his/her occupancy provided the tenant meets all his/her obligations. This means that the registered owner should allow the tenant by occupancy peace and time to live on the “*Kibanja*”, build a home, cultivate crops and trees, grow crops, hold ceremonies in his or her home which include marriage and funerals.

Rights of an Occupant

88. A tenant by occupancy on registered land shall enjoy security of occupancy on the land. This means that he will not be sent away by the registered owner except when he/she fails to pay rent for one year or more and on orders of court.
89. A tenant by occupancy may apply and acquire a certificate of occupancy for the land that he occupies. The certificate of occupancy once issued is registered on the certificate of title of the registered owner by the registrar of titles. This registration informs the whole world of the fact of occupation by the tenant, and the approximate area and size of occupation, thereby protecting all parties.
90. The procedure for application to get this certificate of occupancy is laid out in section 33 of the Land Act. The steps are as follows: -

- i. The application is made, in a prescribed form, to the registered owner of the land.*
- ii. The owner notifies the area land committee.*
- iii. The land committee sets a date for meeting all parties and the neighbours.*
- iv. The land committee's decision is sent to tenant and owner.*
- v. Thereafter, the owner, without undue delay, as long as tenant has paid rent, give his or her consent for acquisition of a certificate of occupancy.*
- vi. The land committee then sends this form to the district land board, for onward transmission to the recorder for issuance of a certificate of occupancy.*

Area Land Committee convening meeting



90. If the registered owner refuses to give consent to the application for a certificate of occupancy within six months, the tenant may appeal to the land tribunal for consent. After hearing the matter, the land tribunal may grant the required consent to the tenant. When consent is granted by the land tribunal, the application is forwarded to the district land board which also forwards it to the recorder for issuance of a certificate of occupancy.

91. The recorder shall notify the registrar of the issuance of a certificate of occupancy, such that it is noted as an incumbrance on the certificate of title.

Land owner receiving a certificate of occupancy



92. Possession of a certificate of occupancy provides documentary evidence that the named person has a right of occupancy. More over since a certificate of occupancy is granted after verification and determination of the boundaries, it is likely to reduce future disputes over land ownership and or boundaries. A certificate of occupancy can also be used to access agricultural credit from financial institutions like SACCOs, Banks and Micro Finance Institutions.

93. A right to abandon his/her occupation of a “*Kibanja*”. Such abandonment occurs where the tenant and all members of his or her family or agent leave the whole of the “*Kibanja*” unattended to for three years or more. Where a tenant abandons his or her “*Kibanja*”, they are free to remove any structures, buildings and other things they put on the land except trees and dams. Where the tenant abandons, he or she is not entitled to compensation.
94. An occupant may assign, pledge and create third party rights on his or her “*Kibanja*” with the consent of the land owner. Such assignment and creating third party rights may include a sale of the “*Kibanja*”, mortgaging of the “*Kibanja*”, renting out the “*Kibanja*” to another person for a period of time, say to grow potatoes for two seasons. This right is also subject to the rights of the spouse of the tenant giving consent.

Duties and Obligations of an Occupant

95. A tenant by occupancy has the following duties or obligations:
 - a. To know the registered owner of the land.
 - b. To apply to the registered owner for a certificate of occupancy.
 - c. To pay to the registered owner the yearly nominal ground rent as set by the boards and approved by the Minister in charge of Lands.
 - d. To use the land in a good husbandry manner. Examples are: not to excessively cut trees, not to cultivate on slopes without putting terraces, not to destroy wetlands.

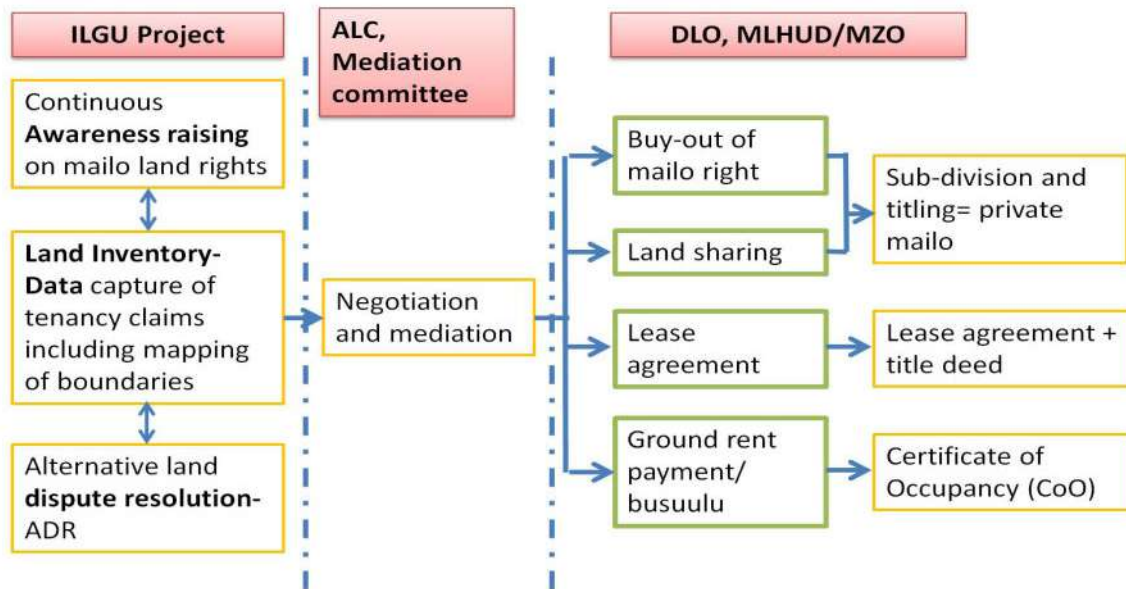
Landlord and Tenants right to negotiate: suggestions on way forward for Landlords and Tenants

96. The above sections have highlighted the rights and obligations of both the landlords and the tenants as provided in the law. This does not however restrict a landlord and tenant to mutually negotiate any terms. The law provides for who qualifies as an occupant on a landlord’s land and how much rent is payable by a tenant to a landlord. The law is silent on how much land should be held by an occupant. This can be freely negotiated upon by the landlord and tenant. Depending on the development on the land , the parties may also freely and

amicably agree on payment of the annual rent in kind, above or below the threshold set up in the law.

97. Traditionally, land had no intrinsic value. The landlord, who was a chief, induced peasants (*bakopi*) to settle upon his land upon payment of a token premium, known as *kanzu*, and subsequently paying tribute and a tithe which was a percentage of his produce. The services and tribute due from the *bakopi* were a series of mutual obligations between a chief and his people, which if observed, left the *mukopi* undisturbed in the possession of his “Kibanja”.
A *mukopi*'s garden usually occupied one or two acres. With the introduction of cash crops, some *bakopi* had extended their gardens to eight to nine acres, depending on the ability of the peasant to utilise the land, the consent of the landlord and the availability of the land.
98. The introduction of cash crops made the landlords impose a rent on cultivators, which was a simple evolution arising from the commutation into money of the services traditionally due by a peasant to his overlord. The Busuullu and Envujjo law of 1928 was enacted and put rental conditions and also gave statutory protection of right of occupancy to the tenants.
99. There is no restriction for a landlord and tenant to negotiate and live harmoniously on terms other than those specified in the law. Such terms could be say subdividing the “Kibanja” and each becomes a registered owner of a specific part, payment of more yearly ground rent especially for those utilising the “Kibanja” for commercial purposes. Some landlords have negotiated with tenants on sharing. The tenant agrees to surrender part of a “Kibanja” in exchange for a finished title, already surveyed and transferred in the names of the tenant. Such negotiation should be encouraged and is not forbidden.
100. The NLP presents options for the landlords and tenants that can be reached only after negotiations and these include: - buy-out, land sharing, lease arrangements and acquisition of certificates of occupancy. Brief descriptions of these are below:

Figure 3: Illustration of Negotiation Options



Land Sharing

101. In land sharing agreements, tenants can agree to let go a percentage of their acreage in lieu of registerable rights in title. The tenant and landlord could choose a mediator for purposes of the sharing- the mediator helps in the negotiations. During the negotiations land is demarcated/surveyed in accordance with the law. Negotiation/Land sharing agreement is drawn and attested to by both parties in the presence of a witness. The agreement can also be witnessed by a neutral party knowledgeable about land issues to rule out the issue of lack of adequate knowledge of the law on the rights and obligations after the agreement has been executed.
102. Land sharing could only be fairly implemented through a fact-based negotiation. The facts (acreage, location, developments) can only be determined through data capture that does not involve prohibitive costs to the parties involved. Land sharing is one of the components of the GIZ project currently being implemented in Mityana and Mubende.

Buy-out

103. Tenants who are able can be facilitated to buy-out the registrable interest in the “*Kibanja*” from the landlord. The government can also purchase the interest of the registered land owner in the land occupied by the lawful/bonafide occupants using the Land Fund and sell the interest to the said occupants based on social justice and equity consideration.

A tenant who wishes to acquire a registered interest from the landlord should seek advise on how to negotiate with the landlord on the price of the landlord and other terms of the buy- out. Buy-out of the Mailo right over the tenanted portion requires a prior determination of the acreage, location, value of land on the tenanted portion. Where the buy-out is for part of the Mailo land and not the whole, the tenants should go to the land office to have the land surveyed. In Mubende and Mityana, GIZ is facilitating surveys for beneficiaries in the project areas.

104. After the terms of the buy-out are negotiated and the survey, if any, is done, the parties should enter into a written agreement sales agreement with the landlord, duly signed in the presence of witnesses. The Mailo owner should sign transfer and mutation forms to facilitate the acquisition of title by the tenant.

How to carry out a sub division on Mailo land (MLHUD transactional procedures)

- i. The Applicant must have in his/her possession a duplicate Certificate of Title, fully filled Mutation Form, and two authentic Passport photographs of the owner (seller). The Mutation Form must have been stamped by the registered Surveyor, fully filled by the registered owner, dated and signed by all the necessary Parties.
- ii. The Applicant presents the Originals and a Photocopy of the documents to the Mailo registry for checking and approval of the subdivision, in order to proceed. The documents are received at the lands office and the photocopy is stamped 'Received' and returned to the Applicant.
- iii. The Applicant checks after 5 working days to pick the documents. The applicant presents the photocopy of the documents stamped on received and on collection it is stamped 'Returned'.
- iv. On presentation of the Approved Mutation Form from the District Surveyor, with an Area Schedule, Receipts of checking fees, Deed Plan fees, registration fees, and the duplicate Certificate of title and passport photographs, and a set of photocopied documents, the Applicant submits them to the Mailo registry. The photocopy is stamped 'Received' and returned to the applicant.
- v. The applicant is asked to check after 10 - 25 working days.

Ground rent/Busuulu payment

105. There is a need for increased transparency on Mailo land use rights. Landlords have titles and yet some do not use or use a very small portion of the land on the title. The Mailo land is heavily tenanted, some of which tenants do not know the landlord. The landlord on the other hand does not know the extent and size of each tenants' occupation.
106. A tenant is obligated to pay a yearly ground rent (busuulu) to the landlord for the use and occupation of the "Kibanja". The landlord is in turn supposed to acknowledge this payment by issuing a receipt. It is after these that a tenant can apply for a certificate of occupancy for the "Kibanja" that he or she owns. The certificate of occupancy can then be registered on the Mailo title as an incumbrance.
107. Assisting the landlords and tenants to document and record these use rights, which is the aim of the GIZ project, would create transparency of Mailo land use rights, reduce disputes between landlords and tenants on one hand and tenants and tenants .

Lease to a "Kibanja" holder

108. A "Kibanja" holder may negotiate with the Mailo owner to obtain a lease over the area covered by the "Kibanja". The process includes demarcating the "Kibanja" by survey, negotiating the premium and annual ground rent payable, preparing and signing before witnesses' lease agreement in duplicate, paying stamp duty and registration fees on the lease, registering the lease at the titles office and obtaining a leasehold certificate of title. Proportionate lease premiums and market rate ground rent also require a determination of the tenancy attributes (acreage, location).

Procedure in case of a squatter

109. Squatters /trespassers are not protected in the law. If one therefore sees that he or she does not fit in the description of a lawful or bona fide occupant, then the likelihood of one being a squatter or trespasser is very high. However, the law provides that such a person should take reasonable steps to seek and identify the registered owner of the land for purposes of negotiating and agreeing to their stay on that land.

5

LEASES ON PRIVATE MAILO LAND

Definition of a Lease

110. A Lease is an interest in land defined in S. 3(5) of the Land Act, where the mailo owner (called a “Lessor”) grants to another (called a “Lessee”) exclusive possession of land for a defined period commencing on a specific date usually upon payment of a capital sum known as premium and payment of an annual sum known as ground rent or some other consideration. It is a contract between the lessor and lessee which is freely negotiated.
111. Leases are created by private mailo land owners and this does not cover land renting by tenants. However, a tenant is free, with the consent of the landlord, to rent out his or her “*Kibanja*” for an agreed time, sometimes measured in seasons. The terms of such renting are freely negotiated.

Manner of creation of a Lease

112. A lease is created either by operation of law or by contract. For purposes of creation of a lease out of mailo land, the mailo owner has, in accordance with Section 101 of the RTA to sign a lease agreement. This is a contract which sets out the particulars of the land, the subject matter of the lease and the terms and conditions of the lease.
113. To ensure that the whole world is aware and bound by the lease it has to be registered with the Registrar of Titles. Upon registration, a leasehold certificate of title is issued to the lessee. Such a lease can be transferred, mortgaged or otherwise dealt into by the lessee although the lease may sometimes require the lessor’s consent for certain transactions.

Rights and Obligations under a Lease

Express or Implied Terms.

114. Since a lease is a contract between a lessor and a lessee, the parties are at liberty to agree on the terms of the lease provided that they are not contrary to any law or public policy. However, there are instances where parties may not expressly agree on certain matters. In such cases, the lease will be governed by the terms implied by law. If the lease does not specifically state that the implied terms do not apply, then they will be binding to the parties.

Covenants implied by the RTA

115. Under S.102 of the Registration of Titles Act, the following covenants are implied against the lessee in favor of the lessor namely:

- i. That the lessee will pay the rent reserved by the lease at the times mentioned in the lease.
- ii. That the lessee will keep the leased property in good and tenable repair throughout the term of the lease except if the disrepair is due to earthquake, storm, tempest or reasonable wear and tear.
- iii. There are also other covenants implied by S.103 of the RTA in favor of the lessor, namely: that once every year, he or she may at a reasonable time of the day, enter upon the leased land with or without surveyors and workmen to view the state of repair of the property, that in case rent is in arrears for a period of thirty days whether formally demanded or not, or if there are other breaches of the terms of the lease for a period of thirty days, then the lessor can re-enter upon and take possession of the leased land, in case of a transfer of a lease, the terms and conditions of the lease will be binding on the purchaser of the lease as an implied term of the transfer under S.105 of the RTA.

Covenants implied at Common Law

116. Under the English Common Law, which applies in Uganda, unless there is a written law to the contrary the following covenants are implied in favor of a lessee, namely:

- a. That the lessee who is performing his or her obligations in the lease will enjoy peaceful possession, use and enjoyment of the property.
- b. That the lessor will not derogate from his grant of the lease by engaging in activities that make it difficult or impossible for the lessee to enjoy the leased land.
- c. That in case of a lease of developed land, that the premises are habitable and suitable for the leased purposes.

117. As against the lessee and in favor of the Lessor, the common law implies the following covenants:

- a. That the lessee shall pay rent.
- b. That the lessor shall pay rates and taxes.
- c. That the lessee shall not commit waste by using the leased land in such a way as to diminish its value.

Termination of a Lease

118. A lease as set out in the definition is for a fixed period of time. However, it may be terminated before that time expires. We outline in this part the various forms of termination of a lease.

Effluxion of Time

119. When the term of the lease say of 49 years comes to an end, the lease is terminated automatically. There is no need for the lessor to serve a notice of termination on the former lessee. If the lessee remains on the land after the date of termination, such a lessee is in law a tenant at sufferance whose occupation can be determined anytime. If the lessor gives notice to such a tenant at sufferance to vacate and the notice is not heeded, the tenant becomes a trespasser. Reasonable force can be used to evict such a trespasser.

Surrender

120. The lessee can terminate the lease before its expiry by surrendering back the land to the lessor. The most common form of surrender is by execution of a document (instrument) called a deed of surrender. This deed of surrender can then be registered at the office of titles where the leasehold title was issued and

upon registration the leasehold Certificate of Title is cancelled.

Forfeiture

121. In case the lessee is in breach of the terms of the lease for example by say not paying rent or using the land for the purposes other than for leased user, the lessor can terminate the lease by forfeiture. There are two types of forfeiture.
122. The lessor may physically and peacefully re-enter upon or take possession of the leased land or part of it in the name of the whole. Thereafter, the lessor may apply to the Registrar of Titles under S. 114 of the RTA to note the re-entry on the Land Register and cancel the lease.
123. In many instances, the lessee may not allow the lessor to peacefully re-enter upon the leased land. In that eventuality, the lessor can only forfeit the lessee through Court. The lessor will file a suit against the lessee setting out the breaches of the lease and seeking orders from Court that the lease be cancelled and possession of the land be given back to the lessor. Court will then determine the matter after hearing the evidence of the lessor and lessee. If Court grants an order of forfeiture, the leasehold certificate of title has to be cancelled.

Merger

124. The existence of a lease presupposes that there are two persons, the lessor and the lessee, who each have different interests in the same land. The lessor as owner of the mailo retains a reversionary interest in the land to be enjoyed after the expiry of the lease. On the other hand, the lessee enjoys immediate ownership for the specified period of the lease.
125. There are instances where the ownership of the mailo and leasehold interest vest in the same one person. This happens for instance if the lessee buys the mailo interest or vice versa. In that eventuality, the two interests are merged into one ownership. The lease as the lesser interest is merged with the reversion.

Upon application, the leasehold certificate of title is cancelled by the Registrar of Titles.

Renewal of Leases

126. A lease as already stated runs for a specified duration and comes to an end. All permanent developments like buildings on the land revert to the mailo owner and unless there is a specific agreement in the lease to the contrary, the lessee cannot make any claim of compensation or payment for any such development. It is however possible for the parties to agree and state in the lease that the lessee has an option to renew the lease. Where such an option is provided for in the exiting lease, then it is the lessee's right to have the lease renewed. Normally, there will be provision for notice to be given by the lessee to the mailo owner indicating that the lessee is exercising the option to renew. If the previous agreement details the terms of the renewed lease say as to rent, then those will apply. If there is no such detail provided, the terms of the new lease will be renegotiated by the lessee and the mailo owner.
127. Where there is no provision of an option to renew, a lease can only be renewed by agreement of the mailo owner and the lessee. Here the parties will literally be starting from scratch. The negotiations will have to cover the premium and rent payable, the length of the lease, user and all other necessary terms to be included in the new lease that has to be executed by the parties.
128. If the negotiations for the new lease are done before the current lease expires, then a deed of variation of the existing lease can be executed and registered on the existing leasehold Certificate of Title. If the old lease has already expired, a new lease has to be executed and upon its registration a new leasehold Certificate of Title is issued.

6

SUCCESSION TO RIGHTS OF LANDLORDS AND OCCUPANTS

129. Succession and inheritance to property is governed by the Succession Act, Cap 162 of the laws of Uganda. In Uganda, land and “*Kibanja*” are the commonest form of property to the majority of people, especially the common person. In most cultures in Uganda, any person who passes away when he or she is an adult and has property and or children must be succeeded to. For property must move to the successor and the children should have a “mother” or “father.”
130. It is always advisable for every person with property to make a will. A will is a document made by a person during his/her lifetime, directing how his or her estate (assets and liabilities which may include money, properties, shares, debts owing and debts due) should be dealt with after his or her death. A person who makes a will is called a testator. When a person dies when he or she made a will, the situation is called testate. Intestate refers to a situation where a person dies without making a will.
131. When you write a will, you are making an important decision concerning the disposal of your assets. This does not only help your friends and family, but also helps to promote justice in society. A person has a right to dispose of his or her assets to whoever he or she wishes and in whatever proportions he or she considers appropriate. Caution should however be taken to make provision for one’s dependants to avoid the will being challenged in a court of law by any of them. The shares need not be equal but reasonable provision must be made

for every dependant. Please note that household properties such as cups, jerry cans, beddings and other utensils are not property to be administered. **A format of a will is attached hereto marked annexure “B”.**

132. For information and emphasis, it is important to know the particulars that should be in a will. These are:
 - ✓ Full names of the testator,
 - ✓ The postal, physical and residential address,
 - ✓ Full names of his or her spouse, place and date of marriage,
 - ✓ Full name of children and their ages,
 - ✓ Full description of properties, for example land, “Kibanja”, vehicle, shares in a company, insurance policies,
 - ✓ Distribution of properties,
 - ✓ Names of executors and their addresses,
 - ✓ Names of guardians of minor children,
 - ✓ Signature or thumb mark of the testator,
 - ✓ Date when the will is made,
 - ✓ At least two witnesses
 - ✓ A will should be written or typed. The testator should sign on all pages,
133. After making a will, the testator can make a codicil. This is an instrument/ document, made after writing a will, explaining, altering or adding to a will. It is considered to be part of the will.
134. Under the law, a residential holding occupied by a spouse and children under the age of eighteen if male and twenty-one years if female and unmarried shall remain their residence and they are entitled to occupy it.
135. A testator has an opportunity to give some of his property to persons of his or her choice in a will (bequeath). Such bequeath can even be to those who may not be legally entitled to it under intestacy for as long as he or she makes provision of all

his or her dependant relatives. The dependant relatives in law are the spouse(s), children and the dependants.

Beneficiaries

Spouse:

136. Spouse means a husband or wife of any person. Succession law only recognizes valid marriages, and that is customary which is polygamous in nature (where a man is allowed more than one wife), licensed [under the Marriage Act and is monogamous (where man is allowed only one wife)], or Registrar of Marriages (also monogamous) or Muslim (maximum of four wives) or Hindu marriage. Cohabitation is not recognised.

Most people in Uganda stay in relationships which are not legally recognised. They are cohabiting. Recognised marriages comprise of only 22% of relationships while cohabitation comprise 65%. Parties in cohabitation relationships are not protected at the time of death. It is therefore important for such parties to formalise their relationships and enter into marriages.

Succession law recognises only valid marriages



Children

137. This includes biological and adopted children. The law of succession does not discriminate against any child, whether born by the legitimate wife or born outside marriage; whether girl or boy; whether disabled or not.

Dependants

138. Means a wife or husband, a son or daughter or a parent, brother or sister, a grandparent or grandchild or any other person who was wholly or substantially dependent on the deceased for provision of the ordinary necessities of life.

Customary heir

139. A customary heir is also among the beneficiaries to a deceased persons' estate. A customary heir can be a child, brother or sister, cousin, uncle or aunt.

Roles of the Clan and Family

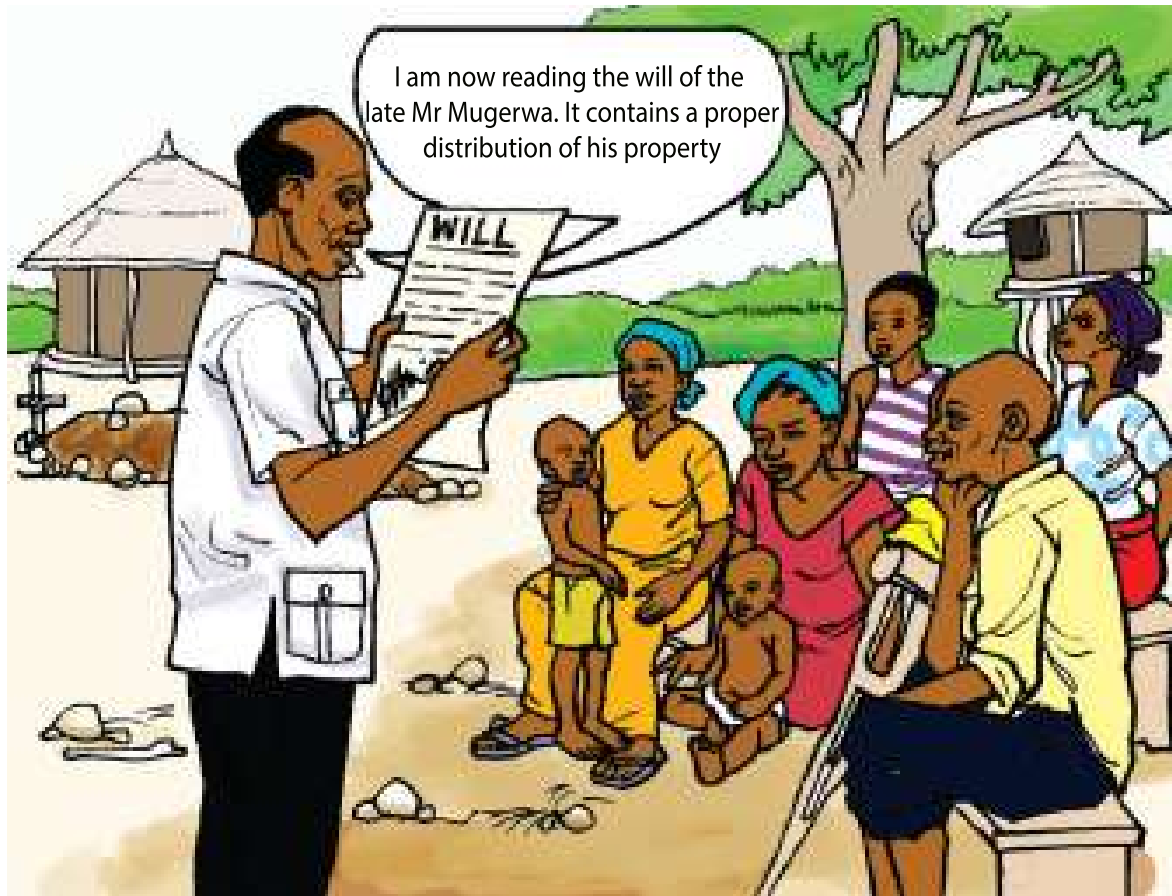
140. Once somebody dies leaving property in Uganda, a report of death must be made to the Administrator General. If the person died in a hospital, a medical certificate of cause of death is always given by the hospital. Where a person dies elsewhere, the family members or closed relatives are obliged to report the death to the sub – county chief where a short death certificate is given.
141. If the deceased left a will, normally the will is read at or soon after burial. The deceased could have appointed an heir. If he or she did not, it is the role of the family and clan members to appoint an heir according to the norms and customs of the family.

Processes of Succession to Landlords Rights

Testate Succession

142. When a person dies leaving a will, the practice is that the will may be read at the burial or at the funeral. If the will makes provision of how one wishes to be buried, the same is implemented.

The Will and distribution of property



143. On the demise of the testator, the executor(s) named in the will proceeds and obtains a death certificate from the hospital or from the Sub county chief. The Executor presents this to the Registrar of Births and Deaths in Uganda at the National Identification Registration Authority (NIRA) or their agents at the district or sub-county.
144. The executor(s) makes an application for probate to a competent court within the jurisdiction where the deceased, at the time of death had property. The petition is written in English language. The will is annexed to the petition. If the will was

not written in English, a translation thereof is attached to the original will in local language. The petition should state the time of the testator's death and attach proof of death. The petition should state that; the writing or document annexed is the testator's last will, it was duly executed, the amount of assets likely to come to the petitioner's hands, and that the petitioner is the executor named in the will. After verifying the will, the court will make a grant of probate to the executor(s).

145. After grant of probate, the executor(s) apply to the registrar of titles to have his or her or their name(s) entered on the register. They accompany the application with a certified copy of the grant of probate, the passport photos and copies of the national identity card of the applicant, and the deceased's certificate of title. The application attracts a registration fee of ten thousand shillings only (10,000=) per title. After entering on the title, the executor(s) can then distribute it to the beneficiaries by way of transfers.

Intestate Succession

146. When a person dies without leaving a will, it is a legal requirement to report the death of any person who dies leaving property in Uganda to the Administrator General. The practice is that at or after the burial ceremony, the family and clan members meet and appoint an heir. The heir and/or close family member(s) proceeds and obtains a death certificate from the hospital or from the Sub county chief. The heir or close family members presents this to the Registrar of Births and Deaths in Uganda at the Uganda Registration Services Bureau (URSB) or their agents at the district or sub-county.

147. The heir or close family member(s) makes an application to the Administrator General for assistance and the following steps are then followed:

- i. Buying a file cover/death report form costing 2,000=at the cash office of the Administrator General
- ii. Filling the death report form with the required information and attaching a death certificate or a letter of the relevant local council 1 confirming the death of the deceased, the will of the deceased if any, a written application/petition/complaint regarding how you want to be assisted by the Office of the Administrator General.
- iii. Thereafter, a file is opened and allocated to a legal officer who initiates investigations.
- iv. The legal officer calls for a meeting of close relatives and friends. This meeting with the administrator general or its agents must take place despite the fact that the family could have conducted an earlier meeting.
- v. The legal officer also conducts a meeting of all beneficiaries' close relatives and friends. The administrator general may by letter request that this meeting be held at the Chief Administrative Officer(CAO) or the sub-county chief. Minutes of the meeting are extracted.
- vi. After the legal officer has satisfied himself or herself of the authenticity of the applicants and /or beneficiaries, and establish that they are in total agreement, the legal officer may recommend that a certificate of no objection to be issued to enable the person/people they have agreed on to apply for letters of administration of the estate of the deceased.

148. Alternatively, the Administrator general may apply for the letters of Administration in cases where there are some disagreements within the family. Application for letters of administration is done to court of competent with jurisdiction where the deceased had property.

149. After grant of the letters of administration, the administrator(s) apply to the registrar of titles to have his or her or their name(s) entered on the register. They accompany the application with a certified copy of the letters of administration, the passport photos and copies of the national identity card of the applicant, and the deceased's certificate of title. The application attracts a registration fee of ten thousand shillings only (10,000=) per title.
150. After entering on the title, the administrator(s) can then distribute it to the beneficiaries by way of transfers. The distribution may involve the administrators sub-dividing the land and separate titles are issued. This then enables each beneficiary to get a separate title.

Processes of Succession to Occupants Rights

151. The initial process of succession to a "*Kibanja*" is basically the same as for testate or intestate succession. If the "*Kibanja*" owner left a will, then his or her wishes are followed, provided the wishes do not disadvantage the women, children or persons with disabilities.

The Will and young Children



152. If the “Kibanja” owner dies without making a will, then the family and clan members meet and appoint the heir according to the customs and culture of the deceased. An heir to “Kibanja” can only succeed to the “Kibanja” rights. Many times however, many of these cases do not end up in court since the land is not registered. Any person aggrieved by the distribution of the clan members can petition the office of the Administrator General for assistance.

7

MANAGING DISPUTES ON PRIVATE MAILO LAND

Introduction to various disputes

153. Land like any other property has historically been the source and subject of disputes and sometimes wars between nations, tribes, clans, families and individuals. In the case of mailo land, the disputes have multiplied because of the population pressure on the land, the increase in the value of land, the existence of multiple interests in land and the weaknesses in the legal system and dispute resolutions mechanisms. There are several disputes between mailo owners themselves; between mailo owners and occupants; between occupants themselves and disputes with Government. This chapter focusses on the common disputes on Mailo land and provides methods of resolving them.

Disputes between mailo owners



154. Several disputes can exist between claimants to mailo land including:
- Disputes over boundaries between neighbouring mailo owners.
 - Disputes over ownership over a mailo piece of land as a result of purchase or other transaction, including fraudulent transactions. For example, Mr. Kigundu bought 5 acres out of Musoke's 40 acres of land and paid only half of the money but he is insisting on surveying off the whole 5 acres promising to pay the balance after getting the certificate of title.
 - Disputes over succession to mailo land between family members.

Disputes between mailo owner and occupant

155. As between a mailo owner and an occupant the following disputes can arise:
- a. Whether the Claimant is actually a lawful or bonafide occupant.
 - b. What is the exact size of land that the tenant is entitled to.
 - c. What are the boundaries of the tenant's "Kibanja".
 - d. Whether the tenant bought or sold his or her "Kibanja" with the mailo owner's consent.
 - e. Whether the tenant has been paying the annual nominal rent.
 - f. Whether the mailo owner has refused to accept the nominal yearly ground rent.
 - g. Whether the mailo owner has sold the mailo without giving opportunity to the tenant to purchase.
 - h. Whether or not to compensate for the "Kibanja" on top of compensation for the developments on the "Kibanja".

Disputes between occupants

156. As between persons who claim to be lawful or bonafide occupants, the disputes may be over:
- a. Who is the actual owner of the disputed "Kibanja".
 - b. Boundaries of the different bibanja holdings.
 - c. Succession to a deceased's "Kibanja" including the share of each beneficiary and exact location of the share. For example, the owner of a "Kibanja" dies and the heir (who is not a family member) claims to be owner of such "Kibanja" as against the claims of the children of the former owner
 - d. Payments over a sold "Kibanja".
 - e. Rights of widows to their deceased husbands' "Kibanja" as opposed to claims of other family members like the heir and in-laws.

Outline of various Dispute Resolution Mechanisms

157. In case of the various disputes on mailo land, the parties have to resort to the various dispute resolution mechanisms if they are to avoid violent confrontations. The parties may resort to Courts of law, administrative mechanisms or to alternative dispute resolution mechanisms. Unless there are mechanisms for

peacefully resolving disputes, the cases of violent evicts will increase leading to destruction of property and in some instances injury to persons and death.

Judicial Processes through the Courts

158. There are various laws under which land disputes can be resolved. These are:-
- a. The Constitution of Uganda, being the supreme law
 - b. The Judicature Act
 - c. The Land Act
 - d. The Registration of Titles Act
 - e. The Physical Planning Act
 - f. The Land Acquisition Act,
 - g. The Civil Procedure Act,
 - h. The Succession Act,
 - i. The Magistrates' Court Act,
 - j. Other Statutory Laws
 - k. Case law
 - l. Equity and Common law

The various Courts and Tribunals

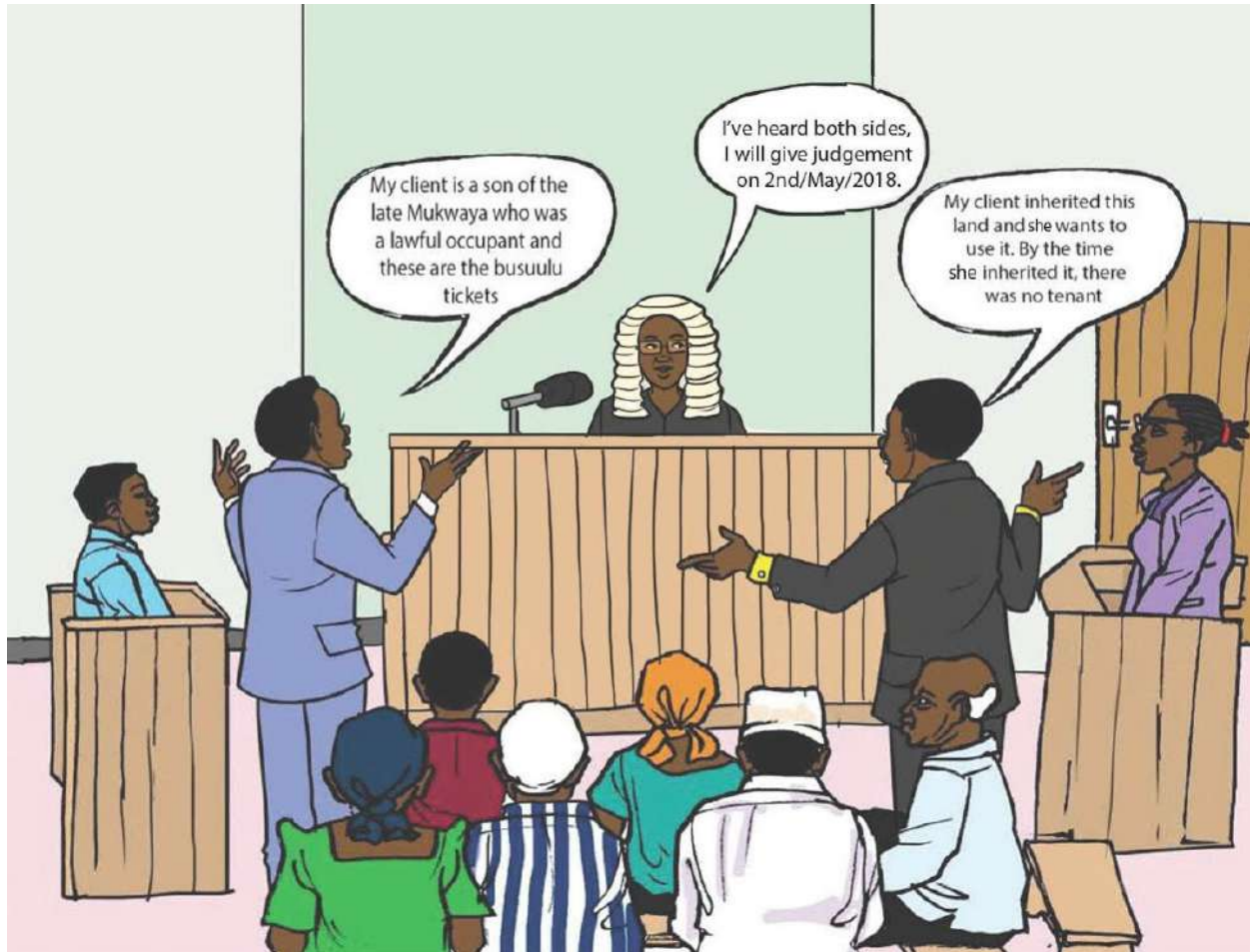
159. Under article 129(1) of the Constitution of Uganda. Judicial power is exercised by the following Courts of Judicature.
- a) The Supreme Court of Uganda.
 - b) The Court of Appeal of Uganda.
 - c) The High Court of Uganda.
 - d) Subordinate Courts as Parliament may by law establish.
160. There are two sets of subordinate Courts established under legislation made by Parliament. Under the Magistrate's Courts Act, Cap. 16 Magistrate's Courts are established to handle disputes. These are Chief Magistrate's Courts, Magistrates Grade 1 and Magistrates Grade II. For purposes of land disputes, Parliament under S.74 of the Land Act (as amended) established Land Tribunals at each District of Uganda. The Land Tribunal handled land disputes of land whose

value does not exceed **Shs. 50,000,000/=**. However, owing to lack of funding, these Tribunals are no longer functioning. All land disputes have to be filed in Magistrate Courts or the High Court. Under the Executive Committees (Judicial Powers) Act, as amended by the Land Act, LCII has judicial powers over land disputes as discussed in chapter two above.

Civil Proceedings before the Courts

161. The majority of disputes over land are those that involve peaceful disputes over ownership, boundaries and other rights. Normally, the disputing parties require the Court to declare and protect their rights or to give them monetary compensation for the violation of their rights. These are civil actions. To start the process, the aggrieved party (Plaintiff) will have to prepare usually with the assistance of a lawyer, Court documents (Plaint) file them in Court. The other party (the Defendant) to the dispute is served the documents filed in the Court and he or she also files a defence. The parties will then present their witnesses to testify in Court and these parties or their lawyers will address Court on the law. Thereafter, Court will make a judgment in writing.

The Court Proceedings:



Criminal Proceedings

162. Sometimes the dispute takes a criminal nature especially where there is violent eviction involving damage or destruction to property or injury to persons. Other criminal actions may relate to forgery of documents of title, agreements or wills.

Where there are criminal actions are done the aggrieved party can report the matter to police. Police then investigates the allegations and if there is credible evidence the police can charge the perpetrators of the criminal actions with criminal charges in the Court. The case is then handled on behalf of Government by the public prosecutor. The aggrieved party appears in Court as a witness for the prosecution. Normally, the person who committed the offences, if found guilty, may be sentenced to a fine or to a term of imprisonment. In some instances, compensation in terms of money may be ordered to be paid to the complainant.

Administrative Mechanisms



163. In many instances, disputes may be resolved through administrative intervention by several authorities, where there is a boundary dispute for example a Surveyor can be identified to open up the boundaries and if the parties accept his or her report that will settle the dispute. Intervention by local council officials, family elders or clan leaders, the police or the Resident District Commissioner or other civic leader may avert an eviction or other form of dispute. All these interventions are informal but they should not contravene the legal process.

Alternative Dispute Resolution Mechanisms

164. Court processes are formal, lengthy and expensive. The ordinary litigation especially widows, children and poor peasants cannot afford the services of lawyers to assist them through the lengthy Court processes. It is therefore necessary to have other alternative ways of amicably resolving disputes other than through court.

165. Alternative dispute resolution mechanism(ADR) refers to any means of settling disputes outside of the court process and includes negotiation, conciliation, mediation and arbitration. There are a number of advantages of ADR over litigation. It is usually faster and less costly, people have a chance to tell their story as they see it, it is more flexible and responsive to the needs of the people involved.

Arbitration

166. Arbitration is a formal process where parties appoint a neutral person to adjudicate their dispute. The parties present their evidence before him or her and he or she makes a decision (an award) which is filed in Court and enforced by Court just like a Court judgment. This form of ADR is slightly better than Court but it has formalities that make it costly. The best forms of ADR are negotiation, conciliation and mediation.

Negotiation, conciliation and mediation

167. These three forms of ADR are all premised on the freedom of the parties to choose how best to resolve their dispute without the hindrance of formal processes. In negotiation, the parties normally sit alone or with their relatives and friends and reach an amicable settlement. In both conciliation and mediation, the parties involve a neutral third party for example an LC leader, a family elder, a religious leader to reach a compromise. No formal documents are filed and there are no other formalities. The parties simply sort out the issue with the mediator of their choice and when they reach an agreement, they sign some documents to evidence the compromise.

168. This form of ADR is attractive to the common and disadvantaged persons like widows, orphans, the elderly and the sickly who may not afford to engage into complicated and formal court or arbitration forms of dispute resolution. Mediators and conciliators are usually flexible and can meet the parties at their convenience.

8

PROTECTING RIGHTS OF WOMEN AND OTHER MARGINALISED GROUPS ON MAILO LAND

Constitutional Protection of Marginalized groups

169. Under article 21(1) of the Constitution of the Republic of Uganda, “all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law”. Accordingly, women (especially the rural poor and widows), children (particularly the girl child), and the disabled should be accorded equal rights to mailo land or the *bibanja* holdings.

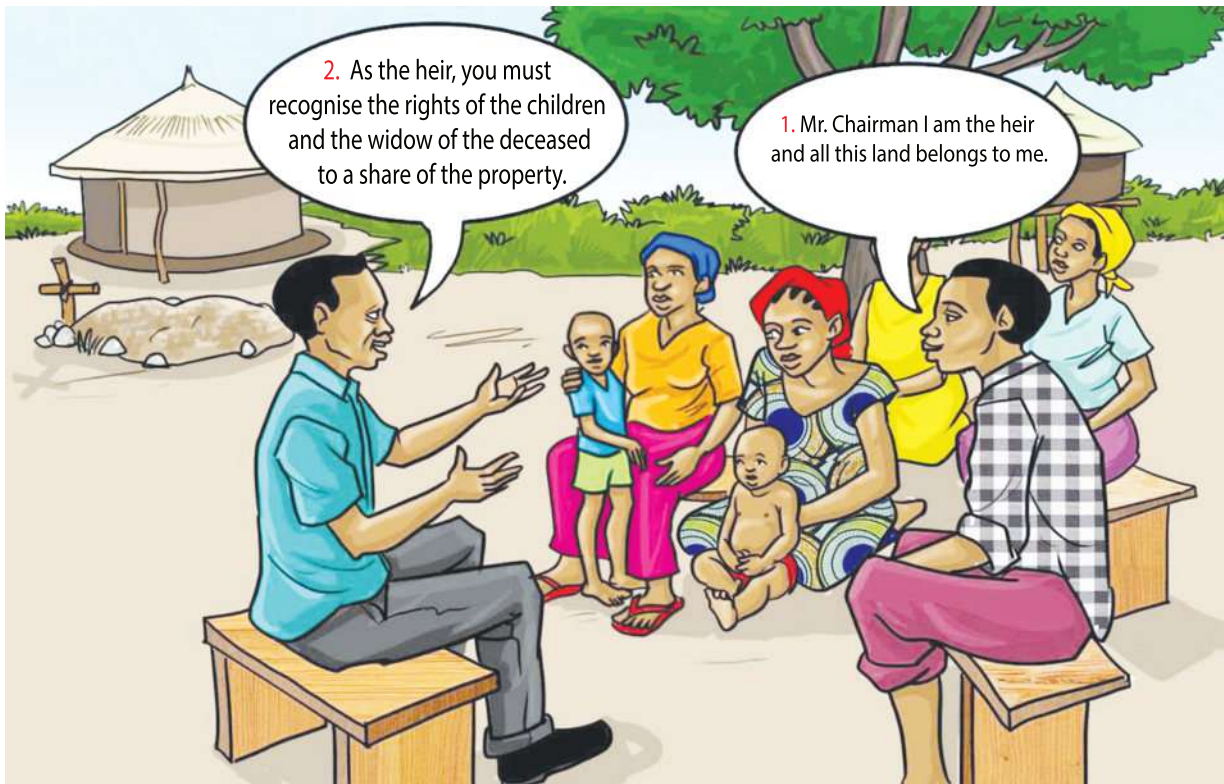
170. Under article 21(2), the Constitution guarantees that there is no discrimination on grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religious, social or economic standing, political opinion or disability. Given this protection, nobody should be treated with discrimination as regards his or her rights to mailo land or a “*Kibanja*” simply because of his or her gender, age, social standing or any other disability.

171. As between men and women, article 31(1)(a) of the Constitution guarantees

them equal rights at and in marriage, during marriage and at its dissolution. In view of this article, women should not lose rights to mailo land or a “Kibanja” merely because of loss of their husbands or dissolution of the marriage. They should be accorded full and equal dignity of the person with men (Article 33).

172. Articles 33, 34 and 35 of the Constitution provides for protection of women, children and persons with disabilities. Accordingly, women, children/orphans and other person with disabilities have rights to mailo land or to a “Kibanja”, for example in cases of purchase and inheritance should be protected by all concerned persons.

Rights of Children and widows



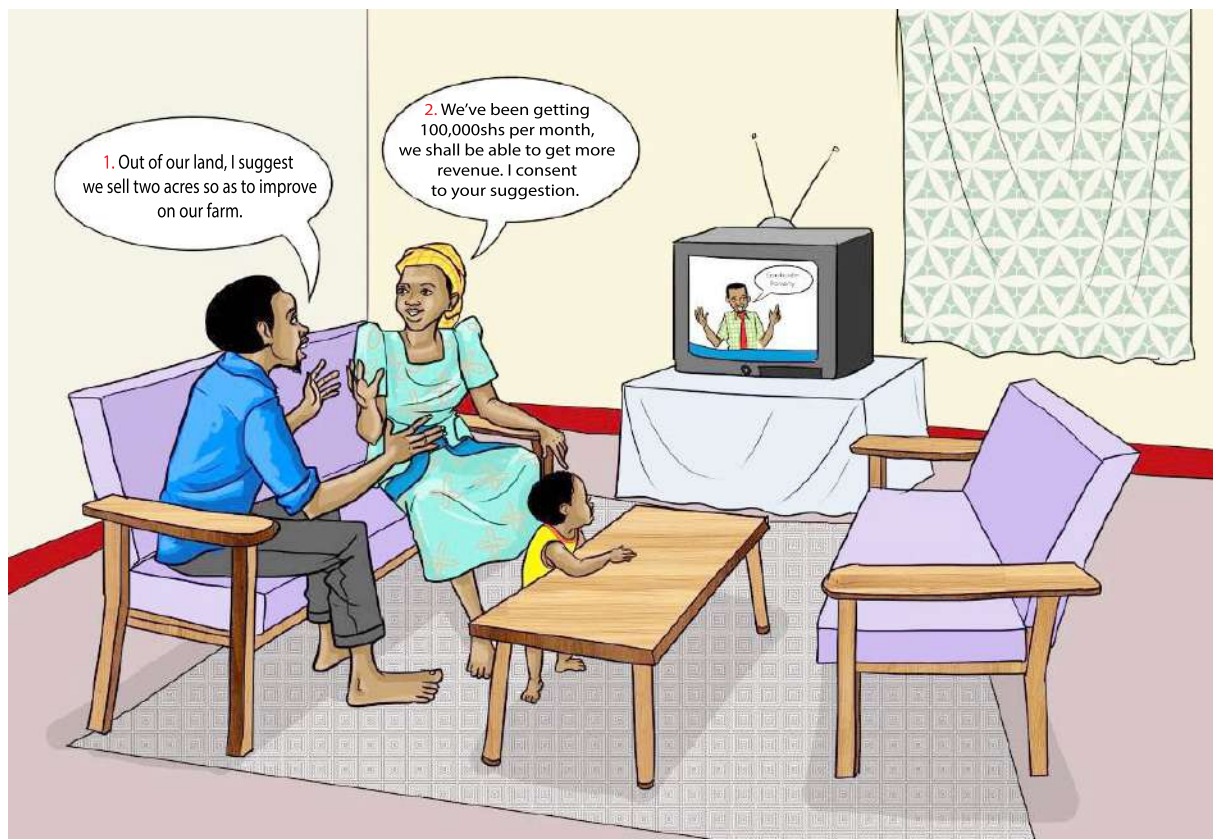
173. The Constitution also protects minorities so that they too participate in decision making and their views are heard (Article 36). With regard to mailo land and “Kibanja” holdings, minority ethnic groups may be very vulnerable and subject to oppression by members of the ethnic majority in an area. This should be avoided. For example, an area could be composed of majority Baganda who may attempt to grab the land of the minority Bakonzho.
174. State actors like LC’s, RDC’s, Police, Land Committees, Land Boards, CAO’s and others should ensure that marginalized people, for example persons with disabilities just like women, children and minorities are given special care and protection as required by the Constitution.

Protection under the Land Act

175. The Land Act has specific provisions for the protection of these vulnerable groups. Section 27 provides for rights of women, children and persons with a disability regarding customary land. It refers to articles 33,34 and 35 of the Constitution. Under this section, any decision which denies women, children and person with disabilities ownership, occupation or use of land or imposes conditions which violates the three quoted articles of the constitution is illegal and null and void.
176. Section 38A of the Land Act, as amended by Act 1 of 2004, provides for security of occupancy of a spouse (a husband or wife) on family land. This means the right for a husband or wife a right to have access and live on family land. Such a husband or wife must be married in a ceremony recognized by the law. The issues of marriage and their validity are discussed in chapter five above.
177. Spouses must give consent to transactions regarding family land under section 39 of the Land Act as amended. These include sale, exchange, pledge, mortgage or lease family land. This means that if the land or “Kibanja” is registered in the names of the husband, as is family land, then any transaction of sale, exchange, pledge, mortgage of lease must be with the consent of the wife. If registered in the names of the wife, then consent of the husband must be got.

178. In all their processes under the Land Act, LC's, Committee Members, the Land Boards and other actors should ensure that the rights of the marginalized groups including women, children and the disabled are specifically taken care of and are protected.

Spouse giving consent



Dispute Resolution Mechanisms

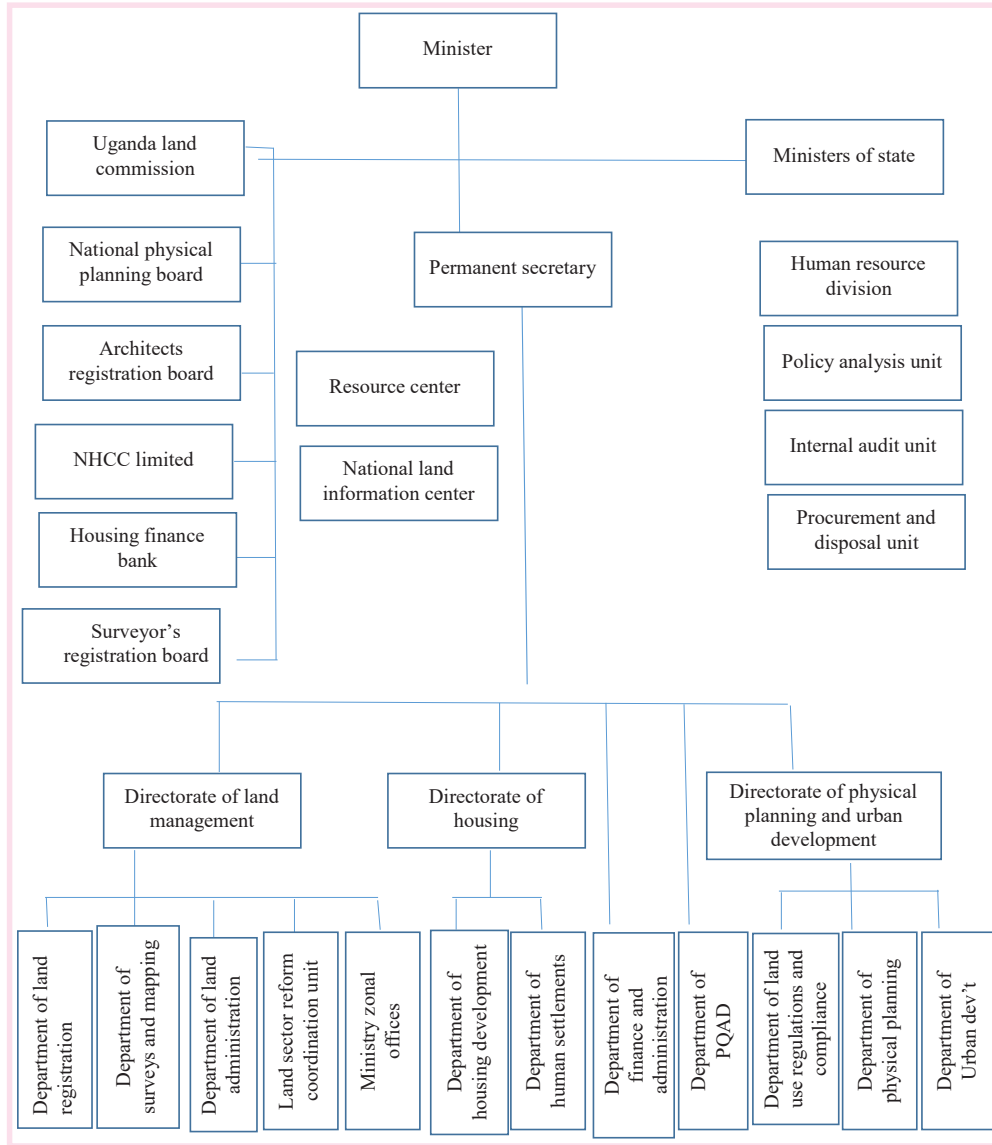
179. In the course of resolution of disputes, rights of women and other vulnerable groups may be ignored. For example, where there is a dispute over ownership of a “Kibanja” where the family stays and cultivates, the husband may agree to

a settlement under which he is paid money and agrees to vacate the land. He may then use some of the money to “settle” the family in a rented room (*muzigo*). He then uses the rest of the money for his own needs leaving the wife and the children abandoned. Accordingly, care should be taken to ensure that in any settlement, the interests of the vulnerable persons are factored into.

180. Where the vulnerable persons are direct parties to a dispute, there must be an effort to ensure that the dispute resolution mechanism employed offers them an opportunity to be heard and for their interests to be fairly determined upon. In negotiation, mediation or conciliation, a friend of the vulnerable woman or child or person with a disability may be appointed to assist such vulnerable person in the negotiation or mediation process.
181. There must be effort to sensitize all persons involved in the dispute resolution efforts to appreciate the need to take special care to protect the rights of vulnerable people.

ANNEXTURE “A”:

ORGANISATIONAL STRUCTURE OF MLHUD



ANNEXTURE “B” WILL FORMAT

THE REPUBLIC OF UGANDA/ THE SUCCESSION ACT (CAP 162)

Last will of (Names)

I, (Names) of
(Address). This day of (month) (Last will (and revoke all
former wills) (or) make this codicil in addition to my former will.

1. I have the said children: -

- ✓
- ✓
- ✓

2. My wife (s)/husband/ I am unmarried;

- ✓
- ✓

3. I have the said dependents

- ✓
- ✓

4. I possess the said properties (i.e. Land, shares, vehicles, Bank accounts e.t.c):

Description of property:

.....

5. The following properties I give to my minor children respectively and they should be managed by their guardian for the purpose of their education, maintenance and upbringing until they reach mature age.

(i) Description of Property),

For (Names)

..... (Description) for (Names)

a) I appoint (Names) of address

to the guardian of my children. He shall be responsible for their proper education and upbringing.

b) The said properties I give to my dependents(relationship)
..... description of the property.

c) My properties in, I give to my wife/husband,(names)

6. I appoint (names) of
address to be the executor of my will.

7. I direct that my body be buried at (place) Besides my father's grave in a coffin, dressed up properly, that the burial takes place not later than 2 days after my death, unless it is preserved, and in any case not later than 5 days after my death.

8. I owe people listed below the money mentioned and direct repayment from account

No at (bank), that is to say: -

a) (names) of
(address) (amount)

b)..... (names) of
(address) (amount)

9. The following people owe me the money mentioned, and I direct collection of that money.

a) (names) of
(address) (amount)

a) (names) of
(address) (amount)

c) I however forgive the following who are indebted to me: -

..... (names) of
(address) (amount)

Dated at (place) the day (a month) 20 (Year)
first above mentioned.

Signed by the said (names)
(testator)

(Signature or thumb mark)

TESTATOR

ATTESTATION OF WITNESS


1. In the presence of Name Address

Signature

2. In the presence of Name

..... Address Signature

ANNEXTURE “C1” CERTIFICATE OF TITLE (REGISTRY COPY)

DISTRICT: MPIGI SUB COUNTY:	UGANDA THE LAND REGISTER PART I – PROPERTY	 1000000087699	COUNTY: MAWOKOTA BLOCK No. 315 AREA IN HECTARES 1.9990	Plot No. 37
NAME OR DESCRIPTION: LAND AT KAUMBA				
ALL THAT piece of PRIVATE MAILO land situates and described above which is indicated on the Registry plan by the Block and plot numbers written hereon.				
Easement, rights, etc appurtenant to the land:				
Registrar of Titles PART II – OWNERSHIP				
Seal of Office Date and Time of Registration 12/02/2018 12.20 PM	Proprietor's Name and Address MPAGI CHARLES MPAGI EMMY JUNIOR all of P.O. BOX MPFIGI ADMINISTRATORS of the estate of the late administration cause No. HCT-00-FD-AC-282-2018 of 13/04/2016 (AS JOINT TENANTS)	Father's Name	Clan	Registrar's Signature
Proprietor's signature or Mark				

MLB01047762

Mpigi (Mawokota Block) (Road) 315 Plot 37

PART III – INCUMBRANCES				
Date and Time of Registration	Instrument No.	Name and Address for service of mortgage, creditor, caveator, etc.	Particulars	Registrar's Signature
15/2/2018 3:10 Pm	KLA 00018700	CERTIFICATE OF OCCUPANCY IN FAVOUR OF MUKATA FOR 2 ACRES AS PER SKEETCH ATTACHED		

MPIGI MAWOKOTA Block(Road) 315 Plot 37

MLB01047762

**ANNEXTURE “C2” CERTIFICATE OF TITLE
(OWNERS COPY)**

U
G
A
N
D
A

REGISTRATION
OF TITLES
ACT

Certificate of Title

District MPIGI


County MAWOKOTA

Block 315

Plot 37

Office of Titles

.....

COUNTY: MAWOKOTA		DISTRICT MPIGI		Plot No. 37	
SUB COUNTY:		BLOCK No 315			
 1000000007599					
UGANDA THE LAND REGISTER					
PART I – PROPERTY					
NAME OR DESCRIPTION: LAND AT KAUMBA					
<p>ALL THAT piece of PRIVATE MAILO land situates and described above which is indicated on the Registry plan by the Block and plot numbers written hereon.</p>					
Easement, rights, etc appurtenant to the land:					
REGISTRAR OF TITLES PART II – OWNERSHIP					
SEAL OF OFFICE		Father's Name		Registrar's Signature	
Date and Time of Registration	Instrument No.	Proprietor's Name and Address	Clan		
12/02/2016 12:20 PM	KLA-00018404	MPIGI CHARLES MPAGI EMMY JUNIOR all of P.O. BOX MPIGI ADMINISTRATORS of the estate of the late administration cause No. HCT-00-FD-AC-285-2016 of 13/04/2016 (AS-JOINT TENANTS)			

MPIGI/MAWOKOTA Block(road) 315 Plot 37

MLB01047762

PART III - INCUMBRANCES				
Date and Time of Registration	Instrument No.	Name and Address for service of mortgage, creditor, caveator, etc.	Particulars	Registrar's Signature
15/2/2018 3:10 Pm	KLA 00018700	CERTIFICATE OF OCCUPANCY IN FAVOUR OF MUKASA FOR 2 ACRES AS PER SKETCH ATTACHED		

MPIGI MAWOKOTA Block(Road) 315 Plot 37

MLB01047762

UGANDA

REGISTRATION OF TITLES ACT



The Republic of Uganda

Certificate
of
Title

MAILO Tenure

ANNEXTURE “D” CERTIFICATE OF OCCUPANCY

SCHEDULE 2

Serial No.....

Regulation 54
FORM 32

Out of
Plot Block
LRV/FRV .....Folio.....
CLIN.....

THE REPUBLIC OF UGANDA
THE LAND ACT, CAP. 227
The Land Regulations, 2004
DISTRICT LAND BOARD

OWNER'S PHOTO

CERTIFICATE OF OCCUPANCY

PART I: DESCRIPTION OF LAND IN OCCUPANCY

1. OCCUPANCY IDENTIFICATION NUMBER (OIN)

District	County/Municipality	Sub-county/Town Council/Division	Parish/Ward	Village	Occupancy No.

2. LOCATION

District

County/Municipality

Subcounty/Division/Urban Area

Parish/Ward

Village/Zone

3. AREA

Approximate area (hectares or acres)

.....
Date of Issue

.....
Recorder's Signature

SEAL OF THE DISTRICT LAND BOARD

Registrar's Copy

PART II: DESCRIPTION OF LAND

Registration Date and Time	Instrument Number	Occupant's Name and Address	Father's Name and Clan	Mother's Name and Clan	Type of Occupancy (<i>Bonafide or Lawful</i>)	Occupant's Signature	Recorder's Name and Signature

PART III: CONDITIONS, RESTRICTIONS OR LIMITATIONS

Registration Date and Time	Instrument No.	Particulars	Recorder's Name and Signature

PART IV: INCUMBRANCES

Registration Date and Time	Instrument No.	Particulars	Recorder's Name and Signature

DAUDI MIGEREKO (MP),
Minister of Lands, Housing and Urban Development.

ANNEXTURE “E” TRANSFER FORM
THE REGISTRATION OF
TITLES ACT

BLOCK **DISTRICT**
PLOT
Mailo/Freehold/Leasehold Register Volume Folio

TRANSFER

I.....
..... of (Address)
.....
Son/daughter of of
.....Clan being the registered proprietor
of the land comprised in the above Title in consideration of the sum of shillings
..... paid to me by the purchaser on or before the execution
of these presents the receipt thereof I hereby acknowledge **DO THEREBY**
TRANSFER all that piece of land (part of the land comprised in the above Title)
which is delineated to the plan annexed hereto and thereon edged in red and
now Plot number to
..... (herein called the
purchaser) of.....
(Address) Son/Daughter of of
.....clan to **HOLD** the purchase for all my estate
and interest herein.

Dated this day of 20....

SIGNED by the said
.....
SIGNATURE OF VENDOR

In the presence of:
Witness:
Address:
Qualification:.....

SIGNED by the said
.....
SIGNATURE OF PURCHASER

In the presence of:
Witness:
Address:
Qualification:.....

A man in a white shirt is working in a field of green crops, possibly maize. He is leaning forward, and his hands are visible near the plants. The background is slightly blurred, showing more of the field and some trees in the distance.

A GUIDE TO PEACEFUL CO-EXISTENCE ON PRIVATE MAILO LAND

Mailo tenure is the most legislated form of tenure in Uganda, having its origins in the 1900 Buganda Agreement. Reforms over the years have seen the evolution of this tenure that is essentially freehold in nature, albeit with its local characteristics arising out of an unresolved tenant question. This status quo was reinstated in the 1995 Constitution, the Land Act and its subsequent amendments.

Whereas it is expected that reforms introduced by the Constitution and Land Act would suffice in stabilizing Mailo tenure, this has not happened in practice. This is not solely because the reforms introduced do not meet the needs of the land lords and tenants, but also because the interpretations and applicability of such provisions has not been provided to the various users and consumers of land administration services to enable the securing of the rights of both tenants and landlords.

“This publication seeks to help in the interpretation and application of the law to enable peaceful coexistence of tenants and landlords on mailo land”