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EVOLUTION OF THE LAW ON LAND REGISTRATION AND LAND RIGHTS IN UGANDA

*Lydia Kisekka Namateefu**

Abstract

This article reviews the evolution of the law on land registration and land rights in Uganda from the pre-colonial period to the present. It examines the influence of historical, political, and legal developments on land registration laws and land rights. The study adopts doctrinal legal research, relying on analysis of statutes, court judgments, government policies, and academic literature. Key legal instruments reviewed include the 1900 Buganda Agreement, the Registration of Titles Act Cap 240, the Land Act Cap 236, the Land Acquisition Act Cap 235, and the Uganda National Land Policy (2013). Document analysis and archival research are used to trace changes in land registration laws over time. The findings show a shift from customary landholding systems to formal land registration introduced during colonial rule and refined through post-independence reforms. Challenges persist, including tensions between customary and statutory tenure systems, corruption, and limited access to land titles.

Keywords – *Land registration, Land rights, Customary tenure, Mailo land, Freehold tenure, Leasehold tenure, Uganda.*

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1. Introduction

Land plays a central role in livelihood, identity, and culture across many Ugandan communities and remains a key foundation for social and economic development.¹ Despite this importance, land rights in Uganda remain insecure and highly contested, particularly in rural areas where customary and statutory tenure regimes coexist and frequently clash.² This situation leaves many Ugandans without clear and legally protected land rights, exposing them to disputes, evictions, and land grabbing. The persistence of land-related conflicts has renewed scholarly and policy interest in the legal frameworks governing land registration and land rights and their capacity to provide tenure security.³

This article examined the evolution of the law on land registration and land rights in Uganda, tracing developments from the pre-colonial period through the colonial era to post-independence reforms. It assessed land registration as a legal mechanism intended to enhance tenure security while also acknowledging its paradoxical role in enabling land grabbing when misused by powerful actors.

The study adopted a doctrinal legal research approach. Data was obtained through analysis of statutes, court decisions, government policies, scholarly literature, and archival records relevant to land

¹ Rose Nakayi, “Certificate of Title: A Discussion of Contemporary Challenges to the Protection of Land Interests in Uganda,” *Journal of African Law* 67, no. 1 (2023): 23–43.

² Benjamin Neimark et al., “Peri-Urban Land Grabbing? Dilemmas of Formalising Tenure and Land Acquisitions around the Cities of Bamako and Ségou, Mali,” *Journal of Land Use Science* 13, no. 3 (2018): 3, <https://doi.org/10.1080/1747423X.2018.1499831>.

³ Klaus Deininger and Derek Byerlee, *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?* (World Bank Publications, 2011), <https://books.google.com/books?>

registration and land rights in Uganda. Document analysis was used to examine key legal instruments, including historical agreements, constitutional provisions, and land statutes, while archival research supported examination of historical land records and legal developments over time. This approach enabled a systematic examination of the evolution of Uganda's land registration laws and their implications for land rights.

2. Findings

2.1 Introduction

Land registration is the formal process of recording legally recognized land ownership, boundaries, and tenure.⁴ It provides landowners with official documentation, ensuring security of tenure and facilitating transactions. The system is governed by the Registration of Titles Act Cap. 240, which establishes the legal framework for registering land ownership across different tenure systems, including freehold, leasehold, mailo, and customary tenure. The government has implemented digital land registration to streamline processes and improve efficiency in record-keeping.⁵

Uganda employs three main land registration systems⁶: private conveyancing, registration of deeds, and the Torrens system. Private conveyancing is an informal system where land transactions occur through written agreements, often witnessed by Local Council One (LC1) officials, without official government records, making it prone to disputes and fraud. The registration of

⁴ LandNet Resource book on Customary Land Registry

⁵ UNECE working party on Land Administration by Her Majesty's Land Registry: Study on Key Aspects of Land Registration and Cadastral legislation, (May, 2000), UNECE Working Party on Land Administration by Her Majesty's Land Registry: Study on Key Aspects of Land Registration and Cadastral Legislation, (May, 2000), n.d.

⁶ Peter Mukidi Walubiri, *Indefeasibility Of Title: An Eroded Concept In Uganda*, 2020.

deeds system involves recording documents proving ownership rather than registering the land itself, which provides some level of protection but does not guarantee ownership due to the possibility of multiple claims on the same land.⁷ The Torrens system, introduced under the 1922 Registration of Titles Act⁸, remains Uganda's primary formal land registration system, where land ownership is recorded in a centralized government register, and once registered, the title is indefeasible, except in cases of fraud. To enhance efficiency and reduce disputes, the Uganda Land Information System (ULIS) has been introduced to digitize land records and improve land administration across the country.⁹

Uganda's land registration framework is managed by various institutions¹⁰. The Commissioner for Land Registration, under the Ministry of Lands, Housing, and Urban Development, oversees the registration and issuance of land titles¹¹. The Uganda Land Commission manages government land and processes leases for public land. District Land Boards allocate and oversee land transactions at the district level, while Local Council One (LC1) authorities play a role in overseeing informal land agreements in

⁷ Jo Henssen, "Basic Principles of the Main Cadastral Systems in the World," *Proceedings of the One Day Seminar Held during the Annual Meeting of Commission 7* (1995), <https://www.academia.edu/download/30249902/henssen1995-basicprinciplescadastralsystems.pdf>.

⁸ Theodore BF Ruoff, *An Englishman Looks at the Torrens System: Being Some Provocative Essays on the Operation of the System after One Hundred Years* (Australia: The Law Book, 1957).

⁹ Larsson Gerhard, *Land Registration in Developing Countries*, 1991.

¹⁰ A.B. Mukwaya: Land Tenure in Buganda; Present day Tendencies, Pg. 15. Eagle Press, Kampala, 1953

¹¹ Sara Kulata B, Ministry of Lands, Housing and Urban Development: Land Records and Registration in Uganda

rural areas.¹² The Buganda Land Board, as a non-state institution, manages land under Buganda Kingdom and issues leasehold titles. Additionally, police land desks were established to handle land-related complaints and prevent illegal evictions.¹³

2.2 The Law on land Registration and Land Rights in Pre-colonial Uganda

Before colonialism, landholding in Uganda was informal, governed by customary tenure systems that varied among ethnic groups¹⁴. In Buganda, land rights were categorized into clan-held ancestral land, the Kabaka's paramount ownership with the power to grant land to chiefs, individual hereditary rights derived from royal grants or long-standing occupation, and peasant occupation rights tied to allegiance to a chief.¹⁵ Customary tenure recognized both individual and communal ownership, with every household having access to land for subsistence through lineage, clan heads, or chiefs.¹⁶ Individuals could use, lease, or inherit land, though transactions required family or clan approval. Clans and families

¹² Rose Nakayi and Monica T. Kirya, *The Legal, Policy and Institutional Framework of Land Governance in Uganda: A Critical Analysis* (Human Rights and Peace Centre, 2017), https://www.researchgate.net/profile/Rose-Nakayi/publication/321361625_The_Legal_Policy_and_Institutional_Framework_of_Land_Governance_in_Uganda_A_critical_Analysis/links/5a1eb4b50f7e9b9d5e000ba8/The-Legal-Policy-and-Institutional-Framework-of-Land-Governance-in-Uganda-A-critical-Analysis.pdf.

¹³ Akena W & Ssemakula EG: Land Management and Governance in Local Government, Opportunities and challenges for District Land Boards in Uganda, pp6-7

¹⁴ Rugadya, M. (1999). *Land reform—The Ugandan experience*. Land use and villagization Workshop, Hotel de Mille Collines in Kigali, Rwanda, 20–21 September 1999

¹⁵ https://en.wikipedia.org/wiki/kabaka_of_Buganda, accessed on 20th September 2023

¹⁶ Susana Lastarria-Cornhiel, “Uganda Country Brief: Property Rights and Land Markets,” Land Tenure Center, 2003, <https://minds.wisconsin.edu/bitstream/handle/1793/23090/ugandabrief.pdf?sequence=1>.

played a central role in land governance, settling disputes, managing communal grazing lands, and prohibiting unauthorized sales.¹⁷ Land rights were determined through oral traditions, natural landmarks, and social recognition rather than legal documentation. These customary systems ensured equitable access to land, preserved resources for future generations, and facilitated dispute resolution, maintaining social harmony. However, between 1884 and 1900, political instability in Buganda, including frequent civil wars and leadership changes, disrupted traditional landholding patterns¹⁸. Despite the absence of formal registration, customary land tenure effectively protected ownership rights and made land grabbing difficult due to the collective enforcement of land claims by communities.¹⁹

2.3 The Law on land Registration and Land Rights in Colonial Uganda

In 1894, the British assumed power in Buganda by declaring a protectorate. The protectorate was expanded to include areas of Bunyoro, Toro, Busoga and Ankole in 1896.²⁰ The declaration of a protectorate in these areas marked the beginning of colonial rule in Uganda. To entrench themselves, the British signed several

¹⁷ Samuel B. Mabikke, “Escalating Land Grabbing in Post-Conflict Regions of Northern Uganda: A Need for Strengthening Good Land Governance in Acholi Region,” *International Conference on Global Land Grabbing*, 2011, 6–8, https://www.researchgate.net/profile/Samuel-Mabikke/publication/261805324_Escalating_Land_Grabbing_in_Post-conflict_Regions_of_Northern_Uganda/links/02e7e5358cf6070c87000000/Escalating-Land-Grabbing-in-Post-conflict-Regions-of-Northern-Uganda.pdf.

¹⁸ A. B. Mukwaya: *Land Tenure in Buganda, Present day Tendencies*. The Eagle Press 1953

¹⁹ Jean-Claude N. Ashukem, “Land Grabbing and Customary Land Rights in Uganda: A Critical Reflection of the Constitutional and Legislative Right to Land,” *International Journal on Minority and Group Rights* 27, no. 1 (2020): 121–47.

²⁰ Phillip Briggs, *Guide to Uganda, Globe Pequot Press: Old Saybrook, CT, Pp 13-20*, 1996.

agreements with local kingdoms starting with the 1900 agreements with Buganda and Toro followed by Ankole in 1901 and later with Bunyoro in 1933.²¹ In Buganda for example, the signing of the 1900 Buganda Agreement²² heralded a new era of land holding system which drastically changed the way land was held in Uganda by introducing three (3) land tenure systems to wit, *mailo* land, freehold land and leasehold land. By the terms of the Agreement²³, land was allocated to the *Kabaka* and his family and to the chiefs both in their political capacity and private ownership (1003 square miles) and another 80001 square miles were allocated to about 1000 chiefs and landowners. The land was allotted on the assumption that they were only conferring in permanent form the ancient rights and privileges possessed by the allottees of the square miles but to their surprise, they discovered that the rights they conferred on the allottees were fundamentally different.

In order to legalise these rights and differentiate them from freehold under English law, a name (*Mailo*) was coined, and the Land Law of 1908 was enacted to provide for the *Mailo* tenure. This law provided that an individual can own up to 30 square miles without special sanction of the Governor, that the *Mailo* owner can transfer land by sale, gift or will to another person of the

²¹ Raph(ed) Uwechue, *Africa Today, Third Edition, Africa Books Ltd, Pp1554-1557, 1996.*

²² The 1900 Buganda Agreement significantly impacted land ownership and tenure systems in the Buganda region of Uganda. The agreement formalized the relationship between the Kingdom of Buganda and the British Protectorate and led to the allocation of land to the *Kabaka* (king), chiefs, and other officials, which was a precursor to individual land ownership and registration. It delineated land into "mailo" and "crown" land, with mailo land belonging to the Buganda government and its officials, while crown land belonged to the protectorate government. This agreement laid the groundwork for subsequent laws on land registration by introducing a more individualized and formalized system of land tenure.

²³ 1900 Buganda Agreement between the British Special Commissioner and the Chiefs and people of Buganda

protectorate but cannot transfer land or lease it to anyone who is not of the protectorate without special permission of the *Lukiiko*²⁴ and the Governor, that where a person leaves no will, succession will be ascertained by customary rules of succession, and that customary rights of the people to use of roads, running waters and springs are preserved. The 1900 Buganda Agreement and the Land Law of 1908 conferred proprietary rights in perpetuity to individuals as opposed to clans or political functions. To concretise this, it was specifically enacted in the land law of 1908 that *the owner of mailo will not be compelled to give a chief who is superior to him any portion of the produce in money or kind.*

Through the tenure systems created under the 1900 Buganda agreement, the British sought to transition land holding from informal to formal and indeed in 1904, the Registration of Documents Ordinance came into force paving way for formal registration of land.²⁵ The law provided for compulsory registration of all documents conferring right, title or interest in land save for those of a testamentary nature. This law did not have a chance to take effect as it was superseded by the Registration of Titles Ordinance in 1908.²⁶ The Registration of Titles Ordinance was based on the Torrens system of land registration and it, among others, provided the legal framework for mailo title grants.²⁷ In a country where prior to 1900, there was no land record, there had to be a process leading to grant of titles that ensured proper

²⁴ The Lukiiko is the parliament of Buganda

²⁵ A.B. Mukwaya: *Land Tenure in Buganda*, Present day Tendencies, Pg. 16. Eagle Press, Kampala, 1953

²⁶ Sara Kulata B, Ministry of Lands, Housing and Urban Development: *Land Records and Registration in Uganda*

²⁷ H Busingye, *Customary Land Tenure Reform in Uganda: Lessons for South Africa. International Symposium on Communal Tenure Reform.* PLAAS, Johannesburg, 2002.

recording of those titles. Indeed, after the signing of the 1900 Buganda Agreement, the first steps were taken to establish a Land Survey Department and the first Chief Surveyor who was later designated as the Registrar of Documents arrived in the country in 1901, and work on the mailo survey of Buganda started in July, 1904, starting in Ssingoo county and concluding in Buvuma Islands in May, 1936. The allotment lists were prepared and confirmed by the *Lukiiko*, once confirmed, each claim was further evidenced by the issue of a provisional certificate pending formal demarcation and survey. After survey and production of plans, an allocatee's mailo interest was recognized by the issuance of a final certificate (FC) supported by a dimensional plan.²⁸

The 1908 Registration of Titles Ordinance was a provisional law and was replaced in 1922 by the Registration of Titles Ordinance 1922.²⁹ The 1922 Ordinance was a comprehensive law based on the same principles as the 1908 Registration of Titles Ordinance, as such, it was easy to bring Mailo titles into the system of registration. The 1922 Ordinance also provided for registration of Freehold and Leasehold titles. The proprietors of these titles had rights to use the land exclusively, to sell or gift the same subject to the law, to bequeath the land by way of last will and testament, and they enjoyed security of tenure.³⁰

In 1939, the Buganda Government passed the Land (Sale and Purchase) Law to regulate sale and purchase of land within the

²⁸ Rugadya, M. (1999). *Land reform—The Ugandan experience*. Land use and villagization Workshop, Hotel de Mille Collines in Kigali, Rwanda, 20–21 September 1999

²⁹ Margaret Rugadya, “Escalating Land Conflicts in Uganda: A Review of Evidence from Recent Studies and Surveys,” *International Republican Institute Working Paper*, 2009, <https://www.landcoalition.org/en/resources/escalating-land-conflicts-in-uganda>.

³⁰ Landnet: Customary Land Registry Resource Book, 2021

Buganda territory. This law sought to extinguish legal rights to land arising from documents that are not registered within a period of two months.³¹

The Land (Sale and Purchase) Law of 1939 made it illegal to sell and to buy land unless the person selling the land is either a registered proprietor of such land or the purchaser or donee of an un-surveyed part of mailo land, and a memorial of his interest in such land has been entered in the mailo register.³²

The creation of mailo titles under the Buganda Agreement and 1908 Land Law did not make provision for the peasants who were customarily occupying land under chiefs in pre-colonial Uganda.³³ The relationship between the Mailo land owner and these people who in the colonial Uganda were referred to as peasants was not clearly defined by the agreement and the law, and it posed a legal challenge that needed immediate attention. To address this, the Busulu and Envujo Law of 1928 was enacted to protect the peasants from the mailo owners. The main effect of this law was to consolidate the customary rights of peasants into legal form. The law also allowed use of customary rights where it was silent but in case of a conflict between the customary rights and the Busulu and Envujo Law, the latter would take precedence. Indeed, in the case of *Kivanuka vs. Ntwatwa*³⁴ where the customary rights of

³¹ Samwiri Lwanga-Lunyigo, *The Struggle for Land in Buganda: 1888-2005* (Wavah Books Limited, 2013).

³² Rose Nakayi, *Marginalized but Not Discarded: Customary Land Rights in Post-Conflict Acholiland of Northern Uganda*, East African Journal of Peace and Human Rights, 2015.

³³ *Ibid.*

³⁴ Principal Court Civil Appeal No. 1 of 1941

the Appellant were in conflict with the *Busulu* and *Envujjo* Law, the court held that

whatever may have been the rights of the appellant by ancient custom to claim that the piece of land occupied by his relative reverted to him when they ceased to use the land, that ancient custom has been done away with by the Busulu and Envujjo Law

This court decision affirmed the superiority of the *Busulu* and *Envujjo* Law over custom.

The *Busulu* and *Envujjo* Law conferred legal status and protection to the peasant holders. The peasant holders were entitled to quiet possession of their land and, were guaranteed hereditary security of tenure.³⁵ The law made it a criminal offence to evict or disturb the peasant's quiet possession.³⁶ The law also provided for fair compensation for improvements on the land in case of a court sanctioned eviction of a peasant, gave peasants rights to cut trees and get firewood, access to pasturage and salt licks, and preserved their rights in case of change of ownership of the mailo title, and the right of the peasant's wife, children and other dependants to live on the peasant holding was protected. In return for the rights given to the peasant holders, the mailo owner had rights to receive *Busulu*³⁷ (rent) and *Envujjo* (tithe on crops grown by the tenant), respect and obedience from the peasant holders as per custom and law, right to occupy any part of the land for purposes of residing

³⁵ John Busingye and Elizabeth Nsamba-Gayiiya, *Land Tenure Reform in Uganda: Experiences from the Uganda Land Alliance* (Uganda Land Alliance, 2014).

³⁶ *Ibid*

³⁷ In the case of *Kasuwa vs. Mawanda*, The Saza Court, Kyadondo, Criminal case No. 69 of 1951, the court granted an order of eviction against the peasant who was found to have deliberately refused to pay *Busulu*.

and growing crops, right to allot the land to whoever he wishes, and right of reversion where the peasant holder or any of his family or other occupant approved by the *mailo* owner has left the land unattended for six months or more.³⁸

Between 1909 when the first grant of a land title to independence and upon the backdrop of the Registration of Titles Ordinance of 1922, many people across the country sought to register their land.³⁹ The demand for titles was overwhelming yet there was limited staff to process the same. To address this, the protectorate government established a survey training school to train plane tablers to assist the surveyors. To mitigate the delay in surveying, landowners resorted to having their claims registered onto the titles and would get a paper on which claims were recorded as register volume and folio (MRV), confirming registration of the claim. This gave rise to many paper claims on the title which made the register become more of a register of claims and caveats rather than a register of titles. When the survey was finally completed in 1936, all the paper claims were archived and, in their place, Mailo Block and titles were adopted. By this time, all land records were kept centrally at the Lands and survey office in Entebbe but with the increasing number of landowners who desired to register their interests in land, the registration of titles services had to be extended beyond Buganda. To address this, zonal offices which became operational in 1956 were created in Mukono, Bukalasa,

³⁸ Augustine Bikokolo Mukwaya, *Land Tenure in Buganda: Present Day Tendencies* (The Eagle Press, 1953), <http://dspace.mak.ac.ug/bitstream/handle/10570/2733/Land-tenure-in-Buganda.pdf?sequence=1&isAllowed=y>.

³⁹ Kulata B Sara, *Ministry of Lands, Housing and Urban Development: Land Records and Registration in Uganda*, n.d.

Mityana, Masaka, Fort Portal, Mbarara and Kabale for mailo, freehold and leasehold titles.⁴⁰

Despite the formalization of land registration systems during the colonial period, they were marred by issues like land grabbing, displacement of indigenous communities, and unequal access to land rights. The colonial laws establishing land registration in Uganda introduced inequities and intricacies that persist today, influencing land ownership structures and sparking land-related conflicts and disputes.

Even though land conflicts were prevalent in the colonial period, they were not as pronounced as they are today because of availability of good land. There was no shortage of good land in most parts of Buganda as there were large tracts of land left unutilized. However, in towns and in the best coffee areas, certain types of conflicts emerged. These conflicts were over boundaries of the land holding, allocation of land, rights of reversion, and occupation of land by increasing landowners who purchased land for their own farming.

The most prevalent conflict in precolonial Uganda revolved around the question of land boundaries between peasants and their landlords and peasants amongst themselves. This was mainly due to the fact that boundaries were not normally marked by any form of boundary marks or signs. In the case of *Musoke vs. Kalinabiri*⁴¹, a peasant holder was granted an unspecified area in a large tract of bush land. The Peasant's landlord sold his mailo interest to another

⁴⁰ Rose Nakayi, "Certificate of Title: A Discussion of Contemporary Challenges to the Protection of Land Interests in Uganda," *Journal of African Law* 67, no. 3 (2023): 433–52, <https://doi.org/10.1017/S0021855323000250>.

⁴¹ Principal Court Civil Appeal No. 6 of 1947

landlord who desired to confine the peasant holding within proper limits. This dispute exposed the lack of boundary marks or signs as the Judicial Adviser observed that the legal position on boundary marks was nebulous in the extreme.

These colonial land registration arrangements and tenure relations laid the foundation for many of the land disputes that persisted into the post-independence period, particularly those involving compulsory acquisition and compensation. The continued centrality of registered titles, combined with weak protection for occupants and users of land, created conditions under which state-led acquisitions frequently generated conflict. This continuity is illustrated in *Uganda National Roads Authority v Irumba & Anor* [2015] UGSC 22⁴², where the Supreme Court addressed compulsory land acquisition and the constitutional requirement of prompt, fair, and adequate compensation. The case arose when the Uganda National Roads Authority attempted to acquire land for a road construction project without prior compensation to the affected landowners. The respondents challenged the acquisition on the basis that it violated Article 26 of the 1995 Constitution, which protects the right to property and restricts compulsory acquisition without adequate compensation. The decision underscores how historical land registration practices, rooted in colonial law, continue to shape contemporary land rights disputes in Uganda.

⁴² *Uganda National Roads Authority v Irumba & Anor* [2015] UGSC 22.

2.4 The law on Land Registration and Land Rights in Post-colonial Uganda

The law on land registration and land rights underwent several changes in post-colonial Uganda. These changes were influenced by the political dispensation at the time which affected the registrable interests in land and rights of landowners. Each government in post-colonial Uganda introduced reforms to suit its land use and management policies. As a result of these changes, registrable interests in land and the rights of landowners were impacted. This section presents the evolution of the law on land registration and land rights in post-colonial Uganda based on the period in which significant changes to the law happened.

2.4.1 The period between 1962 and 1975

Uganda gained independence in October 1962 and the new government relied heavily on the systems put in place by the colonial government in its formative years.⁴³ At Independence, the land tenure systems that existed in colonial Uganda continued to exist with some adjustments⁴⁴. In 1962, the Public Lands Act of 1962 was enacted and under this law, crown land was renamed public land. The Public Lands Act of 1964 vested public land respectively in the Uganda Land Commission, Buganda Land Board, Administration Land Boards and Public Bodies and Urban Authorities.⁴⁵ The law maintained the right of occupancy of Ugandans over public land, only that leases and freeholds could be

⁴³ P. Godfrey Okoth, "Africa's Development Nightmare: Uganda's Case," *Journal of Eastern African Research & Development*, JSTOR, 1992, 132–49.

⁴⁴ Landnet: Customary Land Registry Resource Book, 2021 <https://www.landnet.ug/customary-land-registry-resource-book>

⁴⁵ Sections 11, 12, 13 and 14 of the Public Lands Act of 1962 and the decision of Hon. Justice Stephen Mubiru in the case of Atunya Valiryano vs. Okeny Delphino, Civil Appeal No. 0051 of 2017

granted by government on any public land including land already occupied by indigenous Ugandans.⁴⁶ This had the effect of overriding the existing customary land rights because government could grant leases and freeholds over any public land without the consent of the customary land holders. Because of this loophole, many people took advantage by converting public land into leasehold or freehold which left customary occupiers landless as they were evicted by the new owners of leasehold or freehold. This prompted the government to enact the Public Lands Act of 1969, which among others, vested public land in Uganda Land Commission and Public Bodies only⁴⁷, recognised and defined customary land tenure,⁴⁸ and prohibited the issuance of freehold and leasehold titles on any public land occupied by customary occupiers without any proof of consent from the customary occupiers.⁴⁹

Even though the Public Lands Act of 1964 recognised and protected the traditional rights of customary landowners, neither it nor the Registration of Titles Act of 1964, put in place a framework for registration of customary interests in land and this eroded the security of tenure for customary land occupiers. It also meant that with the economic boom at the time, customary land occupiers could not use their land to access credit from financial institutions for production. The Registration of Titles Act of 1964 cap 205

⁴⁶ Landnet: Customary Land Registry Resource Book, 2021. www.landnet.ug

⁴⁷ Sections 1 and 21 of the Public Lands Act of 1969 and the decision of Hon. Justice Stephen Mubiru in the case of Atunya Valiryano vs. Okeny Delphino, Civil Appeal No. 0051 of 2017

⁴⁸ Section 51 of the Public Lands Act of 1969 defined customary land tenure to mean a “system of land tenure regulated by laws or customs which are limited in their operation to a particular description or class of persons.

⁴⁹ Landnet: Customary Land Registry Resource Book, 2021

which later became the Registration of Titles Act Cap 240 as we know it today, was modelled on the Registration of Titles Ordinance of 1922 and provided for registration of all interests affecting Freehold, Leasehold and mailo land tenure. This Act based on the Torrens system revolves around centralised register in which titles are kept in a running form each representing a separate parcel of land described therein and registered as provided for in the Act.⁵⁰ Under the Registration of Titles Act of 1964, if land is brought under the Act for the first time, the registrar is required to prepare a certificate of title in duplicate with one copy being retained by the registrar and kept in the register book, and the other copy issued to the person registered as the proprietor of the land.⁵¹ Any transaction affecting the land such as a caveat, mortgage or lease must be endorsed on the register book and the two copies of the certificate of title.⁵² Registration of land under the Registration of Titles Act of 1964 guaranteed the registered proprietor the right of security of tenure, all user rights, the right to exclude others from use of the land and for the Freehold and Mailo tenures, the Act guaranteed them ownership in perpetuity.⁵³

2.4.2 The Period between 1975 and 1995

In 1975, the Land Reform Decree⁵⁴ was enacted with the most radical position on land tenure in post-independent Uganda. It declared all land in Uganda public land and title to the land was

⁵⁰ John Tamukedde Mugambwa, *Principles of Land Law in Uganda* (Fountain, 2002), <https://researchportal.murdoch.edu.au/esploro/outputs/book/Principles-of-land-law-in-Uganda/991005543424907891>.

⁵¹ Ibid

⁵² Ibid

⁵³ Landnet: Customary Land Registry Resource Book, 2021 <https://www.landnet.ug/customary-land-registry-resource-book>

⁵⁴ Land Reform Decree No. 3 of 1975

vested in the Uganda Land Commission (ULC). All freehold land, including mailo was converted into leaseholds. Customary occupants were deemed to hold land at sufferance which could be terminated at any time without notice.⁵⁵ The rent that was paid by tenants was also abolished⁵⁶. These tenants did not have any transferable interest in land, only developments on land could be transferred after giving three months' notice to the controlling authority.⁵⁷ Under section 5 of the Land Reform Decree, no person was to occupy public land by customary tenure except with written permission of the prescribed authority.⁵⁸ This was the situation in Uganda until the 1995 Constitution that changed the land tenure system in Uganda.

2.4.3 The period from 1995 to date

In 1995, the Constitution of the Republic of Uganda, 1995 was promulgated with revolutionary changes to the land tenure system. The Constitution declared that all land belonged to Ugandans and vests in them to be held under any of the four (4) land tenure systems, to wit; Mailo, freehold, leasehold and customary tenure systems.⁵⁹ The Constitution further made it a right for any person to own land individually or in association with others.⁶⁰ The most profound of the constitutional provisions is the provision of the building blocks for the registration of customary ownership of

⁵⁵ Mwebaza, A Historical Perspective of the Land Problem in Uganda

⁵⁶ *ibid*

⁵⁷ Rugadya, "Escalating Land Conflicts in Uganda: A Review of Evidence from Recent Studies and Surveys."

⁵⁸ *Ibid*

⁵⁹ Article 237 of the Constitution of the Republic of Uganda 1995

⁶⁰ Article 26 of the Constitution of the Republic of Uganda 1995 as amended

land,⁶¹ and recognition of lawful and bonafide occupants on mailo, freehold and leasehold land who are also known as tenants by occupancy.⁶² The Constitution does not only recognise tenants by occupancy but it also guarantees them security of occupancy on the land.⁶³ This gives a tenant by occupancy property rights which include protection from eviction by the landlord, hereditary rights, and they can register their interest in land and obtain a certificate of occupancy. The Constitution provides a basis for land registration in Uganda by bestowing on parliament the obligation to enact laws to that effect. Pursuant to this, the Parliament of Uganda enacted the Land Act Cap 236 in 1998 and addition to the already existing Registration of Titles Act Cap 240 to regulate land ownership, use and management.

The Land Act of 1998 outlines the administration and management of land in Uganda, setting up key institutions like District Land Boards,⁶⁴ Land Committees,⁶⁵ Communal Land Associations,⁶⁶ District Registrars of Titles,⁶⁷ and Land Tribunals⁶⁸ for governance. The District Land Boards hold and allocate land in the district that is not owned by any person or authority. Most

⁶¹ Article 237(4) (a) and (b) of the constitution of the Republic of Uganda allows customary land owners to acquire certificates of ownership, and conversion of Customary land to freehold ownership.

⁶² Article 237(8) of the Constitution of the Republic of Uganda, 1995 as amended

⁶³ Ibid

⁶⁴ District Land Boards are responsible for allocating and registering land at the district level.

⁶⁵ Land Committees are responsible for advising District Land Boards on land allocation and management.

⁶⁶ Communal Land Associations are responsible for managing communal land on behalf of their members.

⁶⁷ District Registrars of Titles are responsible for registering land transactions and maintaining land records.

⁶⁸ Land Tribunals are responsible for adjudicating land disputes.

importantly, District Land Boards facilitate the registration and transfer of interests in freehold and leasehold land by providing vital information without which interests in land cannot be registered.⁶⁹ In facilitating registration and transfer of interests in land, District Land Boards rely heavily on Area Land Committees. The Land Committees advise the District Land Boards on matters relating to land including ascertaining rights on the land prior to allocation. They do due diligence on the land and recommend to the Board about anyone who wants to acquire land in their area. Akena & Ssemakula⁷⁰ in this regard, Area Land Committees play an important role in the registration and transfer of interests in land in their locality.

The Land Act of 1998 actualised the reforms provided for in the Constitution by recognising customary tenure as a legitimate system of land holding in Uganda and putting in place a framework for conversion of customary tenure into Freehold, mailo or leasehold tenure and registration of interests in land whereby customary land owners apply for and obtain certificates of customary ownership.⁷¹ The Land Act allows a person, family or community holding land under customary tenure to apply for and obtain a certificate of customary ownership (CCO) in respect of the land.⁷² Registries responsible for registering customary land and issuing certificates of customary ownership are established at sub-

⁶⁹ IGAD: Land Governance in IGAD region; Assessment of Land Governance Framework, Training and Research Land Governance Institutions

⁷⁰ Walter Akena and Eugene Gerald Ssemakula, "Land Management and Governance in Local Government," *Constitution* 240 (1995): 237.

⁷¹ Landnet: Customary Land Registry Resource Book, 2021

⁷² Section 4 of the land Act Cap 236

county level.⁷³ The creation of registries for CCOs at SUB-County level reduces the weight attached to a CCO by the land owners. Moreover, the National Land Information System in Uganda currently accommodates only Mailo, Freehold and Leasehold tenures which makes one think that the Customary Tenure and CCOs issued are inferior titles.⁷⁴

The land Act also mandated spousal consent for family land transactions. The case of *Olowo and 3 Others Vs Olowo and 2 others*⁷⁵ where one of the plaintiffs who was customarily married to the 1st Defendant but never registered their customary marriage claimed that a home which the 1st Defendant mortgaged was a matrimonial home, serves as a key example in the ongoing evolution of Uganda's law on land registration, demonstrating the intricate challenges in acknowledging and protecting family property rights.

The Land Act of 1998 in equal measures enhances the rights of tenants by occupancy which, among others, include security of occupancy, priority to purchase land if the registered owner wants to sell, can sublet, subdivide, give away the interest by will and can acquire a certificate of occupancy by applying to the registered owner.⁷⁶ Like for certificates of customary ownership, tenants by occupancy were not able to apply for certificates of occupancy

⁷³ Landnet Uganda, Establishment of a customary Land Registry in Uganda: Issues and Position Paper

⁷⁴ Ibid

⁷⁵ Civil Suit No. 76 of 2012

⁷⁶ The court in *Ponsiano Katamba vs. Cotilda Nakirijja* Civil Appeal No. 169 of 2017 defined the rights of a tenant by occupancy as provided for in the Act

until 2015 and despite government efforts, there is low uptake from tenants by occupancy.⁷⁷

Land registration and the associated laws are crucial for establishing legal ownership and resolving disputes. For instance, in the case of *Katende v Uganda Land Commission*,⁷⁸ the plaintiff challenged the wrongful and fraudulent registration of his land under the defendant's name, which was based on an instrument that did not apply to his land. The progression of law on land registration in Uganda, as exemplified by the case of *Katende v Uganda Land Commission*⁷⁹, signifies a judicial approach that prioritizes the protection of property rights against deceitful registration practices. The Ruling re-establishes the principle that registration procured through fraud is null, and it emphasizes the need for government agencies to operate within the confines of the law when handling private land. This case also illustrates the court's readiness to award remedies such as compensation based on present market values and exemplary damages for unconstitutional and arbitrary actions by government officials, thereby fortifying the legal framework that regulates land registration and ownership in Uganda.

3. Conclusion

The law on land registration and land rights in Uganda has evolved overtime mostly being reactive to prevailing situations that the lawmakers at the time thought important to address through

⁷⁷ Trac FM: Land Rights in Uganda, the Peoples' perspective through interactive radio polls

⁷⁸ *Katende v Uganda Land Commission* (Civil Suit No.573 of 2015) [2019] UGHCLD 9 (20 March 2019)

⁷⁹ *Ibid*

legislation. With the exception of the Land Reform Decree of 1975, the changes that were made over time aimed at making land ownership more secure and land dealings clearer, hoping for better organization and accountability in managing land. The issues affecting land registration and land rights in Uganda are inherited from the colonial period which created inequities in land rights that could be and could not be registered, and these inequities have not been sufficiently addressed. The law has also brought about some unintended adverse effects; for example, the Land Reform Decree of 1975 displaced customary landowners who, despite lacking formal documentation, had longstanding claims to their lands based on heritage and tradition.