

# **LAND JUSTICE AND EXECUTION OF COURT DECISIONS IN UGANDA**

**Presentation by Justice Immaculate Busingye Byaruhanga**

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## **1. Background**

Land in Uganda is by far the most important natural resource and one that is highly commercialized. This in turn has resulted into land scarcity which has eventually impacted on court processes.

The 1995 Constitution of the Republic of Uganda vests land in the citizens of Uganda. Furthermore, **Article 26** of the 1995 Constitution of the Republic of Uganda provides that every person has a right to own property either individually or in association with others. The same provision strictly prohibits deprivation of one's property save for in circumstances of compulsory acquisition for public use wherein prompt payment of fair and adequate compensation must be made.<sup>1</sup>

In the public interest case of *Muhindo James & ors versus Attorney General HCMC No. 127 of 2016*, wherein the applicants had all been forcefully evicted from both public and private land since 1970, Justice Ssekana Musa acknowledged the fact that some evictions may be justified most especially when they arise from court orders, however, the same must be done in a justified manner. The Honorable Justice held that the absence of eviction guidelines is a threat to possible violation of rights enshrined in the Constitution.

This decision and land evictions informed the Chief Justice Emeritus Hon. Justice Bart Katureebe's decision to issue The Constitution (Land Eviction) (Practice) Directions, in 2021. These directives were meant to streamline the process of land evictions and demolitions and to ensure that all evictions and demolitions are carried out in a fair, just and humane manner that respects the dignity and rights of all persons affected. These guidelines stipulate the procedure to be followed in land evictions arising from court proceedings.

It is settled law that Directives or guidelines issued by the Chief Justice carry the force of law and as such the Constitution (Land Eviction) (Practice) Directions, in 2021 must be adhered to by Court Certified Bailiffs when implementing an eviction order issued by a court with competent jurisdiction.

### **1.1. Compulsory Acquisition versus evictions**

It is important to distinguish between compulsory acquisition and evictions. Although they are very similar in nature, they are not the same thing. There is a distinction between the two, most especially in cases of public land. Being forced off land that is considered a protected natural resources for instance land in swamps, national game reserves, forests among others, is likely to be part of evictions, especially if there was prior knowledge about the rights to live there. On the other hand, if the government approaches people about the need to buy land for developmental projects and it actively negotiates with the citizens and proceeds to fairly compensate them, then compulsory acquisition under the **Land Acquisition Act, Cap 235** comes into play.

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<sup>1</sup> Article 26 (2) of the 1995 Constitution.

According to **Section 33 of the Land Act Cap 236 (Revised Laws of Uganda)**, nonpayment of annual nominal ground rent is the only qualifying ground for evicting a lawful or bonafide occupant subject to receipt of an order of eviction from a court with competent jurisdiction.<sup>2</sup>

Landlords must serve eviction notices on tenants who have defaulted on payment of ground rent after a period of one year so as to show cause why the tenancy should not be terminated. In cases where the tenant disputes the notice, he or she may refer the matter to court within a period of six months from receipt of the eviction notice from the Landlord.

In cases where the tenant does not challenge the eviction notice within the prescribed time or pay the outstanding rent within a period of one year from the date of the notice, the registered owner applies to court for an order to terminate the tenancy for nonpayment of rent.

When the courts of law are making eviction orders, they are mandated to give dates, not being less than ninety days after the date of the order, by which the persons being evicted have to leave the land. In such circumstances, the courts may also grant any other orders on expenses such as damages, compensation or any other matter as they may deem fit.

It is important to note that a change in ownership of title through a sale, donation or any other bequest does not affect any existing lawful interests of the lawful or bonafide tenant. This means that the landlord is free to sell his or her interest, however, the new tenant cannot evict the existing tenants that are found on the land.

## **2. Procedure of land Evictions under The Constitution (Land Eviction) (Practice) Directions, 2021**

According to **Directive 4 of the Practice Directions (supra)**, *eviction* is defined as removal of a person from possession of their proprietary interest through a valid court order. The same directive equally defines an '*order of demolition*' as a legally enforceable order issued by a competent court compelling or authorizing the demolition of a structure or a building and an '*order of eviction*' refers to a legally enforceable order issued by a competent court and signed by a Judge, Magistrate or Registrar to vacate a property.

It is imperative that all the responsible stakeholders including judicial officers, court bailiffs, police, advocates among others adhere to the Constitution (Land Eviction) (Practice) Directions, in 2021. **Directive 3 of these guidelines** lays out the underlying objectives of these Directions and these include;

- a. *To protect proprietary interests and rights as provided for by Article 26 of the Constitution.*
- b. *To promote and ensure respect of the fundamental principles of natural justice.*
- c. *To promote uniformity and consistency in handling evictions and demolitions.*
- d. *To promote harmony among the various stakeholders in the administration of justice.*
- e. *To give direction on eviction procedures to Judicial Officers, litigants, bailiffs, police officers, counsel and other stakeholders.*

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<sup>2</sup> Section 33 (3) Land Act Cap 236

### **2.1.Principles for eviction and demolition**

According to Directive 5 in the Eviction Practice Directions, evictions and demolitions shall be carried out in accordance with certain principles, including;

- a. *Every eviction or demolition shall be preceded by a valid court order, which must properly identify the persons taking part in the eviction or demolition and upon presentation of formal authorization for the eviction or demolition.*
- b. *The police and local authority of the area (LC officials) must be notified prior to the eviction and or demolition and they must be present to witness the said eviction or demolition with the police in place to preserve law and order during the process of eviction or demolition.*
- c. *Every eviction or demolition must be conducted in a manner that respects dignity, right to life, property and security of all persons affected.*
- d. *Measures must be taken to ensure the effective protection of vulnerable persons like the elderly, women, children and persons with disabilities.*
- e. *Arbitrary deprivation of property and or possession as a result of the eviction is strictly prohibited.*
- f. *No court eviction or demolition shall be carried out during a weekend, court vacation or on a public holiday. Similarly, evictions or demolitions shall only be carried out between the hours of 8:00am and 6:00pm.*
- g. *Person being evicted shall be given an opportunity to salvage their property or to remove illegal structures and where one does not comply, the eviction or demolition shall be carried out.*
- h. *Persons carrying out evictions or demolitions shall respect the principles of necessity and proportionality. According to the Blacks' Law Dictionary, the **principle of proportionality** relates to the fact that the use of force should be in proportion to the threat or grievance provoking the use of force, while the **principle of necessity** is defined as an extraordinary action by an administrative authority which is designed to restore order or uphold fundamental constitutional principles which are considered to be lawful even if such actions contravene established legal norms and conventions.*
- i. *Finally, a court bailiff carrying out an eviction shall ensure the provision of storage facilities to store property from evictions or demolition sites for a period of 14 days in order to protect the property and possessions from destructions.*

### **2.2.Requirements for evictions and demolition**

Prior to conducting an eviction or demolition, the court bailiff must fulfill the following requirements including;

- a. *There must be a valid court order or decree directing the eviction or demolition.*
- b. *There must be an order of eviction or demolition clearly stating the name of the person evicted or the illegal structure to be demolished.*

- c. *There must be a notice of eviction or demolition to the persons to be affected by the eviction or demolition.*
- d. *There must be a warrant of eviction or demolition which is applied for by the judgment creditor or their advocate from the Court responsible for execution.*<sup>3</sup>

### **2.3 Notice period for eviction or demolition**

**Directive 9 (1)** requires that when issuing an order of eviction or demolition, the court must issue adequate and reasonable notice of eviction or demotion of a period not less than 90 (ninety) days and not more than 120 (one hundred twenty) days to the affected persons. This issue was recently referred to by **Hon. Justice Farouq Lubega** in his decision in the case of **Katunku Edward versus Hassan Hashim HCMA No. 94 of 2024**.

An order of eviction<sup>4</sup> must include the particulars of the persons being evicted, the date of eviction and any other matter that the court may deem fit. In regards to an order of demolition<sup>5</sup>, it must state the identity of the plaintiff, the identity of the defendant, the date of demolition, and the persons who constructed illegal structures on the land.

Upon competition of an eviction and or a demolition order, the court bailiff must file in court a return on the eviction or demolition.<sup>6</sup> The timelines provided by the Civil Procedure Rules and the Bailiffs Rules have to be followed in respect of returns.

### **3. The role of Court Bailiffs in the Land eviction practice in Uganda.**

Eviction and demolition are one of the recognized modes of execution particularly in land law practice and as a matter of law all executions arising from court orders are conducted by court appointed bailiffs. According to **Directive 4 of the Constitution (Land Eviction) (Practice) Directions**, a court bailiff is defined as a person licensed and appointed as such by the Chief Registrar, Deputy Chief Registrar, assistant registrar or Magistrate. **Rule 4 of the Judicature (Court Bailiffs) Rules, 2022** defines a court bailiff as person licensed as a court bailiff under Rules 8 but excludes a company, association or body of persons corporate or incorporate.

Rule 7 of the **Judicature (Court Bailiffs) Rules, 2022**, prohibits any person from undertaking execution proceedings unless he or she is appointed and licensed as a court bailiff under the Rules. The appointing authority for Court bailiffs is the Chief Registrar.

The conditions to be met before one can be licensed as court bailiff include<sup>7</sup>;

- a. *The applicant must be a Ugandan of good repute and of majority age*
- b. *The applicant must possess a diploma in law*
- c. *Must be of sound financial standing evidenced by a current bank statement.*
- d. *Must have adequate facilities for storage of distressed goods.*

<sup>3</sup> Directive 10 (1) and (2) of the Constitution (Land Eviction) (Practice) Directions, in 2021

<sup>4</sup> Directive 7 (ibid)

<sup>5</sup> Directive 8 (supra)

<sup>6</sup> Directive 12

<sup>7</sup> Rule 8 Judicature (Court Bailiff) Rules, 2022

- e. *Must not be an undischarged bankrupt or subject of any bankruptcy proceedings in any Country.*
- f. *Must have not be convicted of any criminal offence involving dishonesty and moral turpitude.*

It is also a requirement that the storage facilities and office of the intended court bailiff be inspected and verify the suitability of the premises, availability of sufficient furniture, computers and storage equipment, availability of competent staff to perform the tasks required by court, availability of sound record keeping systems, and hoisting of the court bailiff's business name at the entrance of the office.<sup>8</sup>

### **3.1. Duties of a court bailiff in execution proceedings**

A licensed court bailiff may execute any order of court arising from civil and criminal proceedings, distress for rent proceedings or any other proceedings sanctioned by a court or tribunal established by law within the boundaries of Uganda.<sup>9</sup> During execution proceedings, court bailiffs are required to ensure high level of diligence in handling property and persons as well as ensure proper care and appropriate custody of attached property and persons arrested.<sup>10</sup> It is important to note that a court bailiff is prohibited to selling attached property to himself or herself, or a member of their family or in a company in which the bailiff has an interest.<sup>11</sup>

### **3.2. Land Eviction between landlords and tenants.**

It should be noted that the **Constitution (Land Evictions) (Practice) Directions** do not apply to evictions carried out by landlords as against their tenants. These evictions are governed by the **Landlord and Tenant Act, Cap 238**. The relationship between a landlord and a tenant is premised on the tenancy agreement which is governed by the Law of Contract. Similarly, under **Section 45 of the Landlord and Tenant Act, 2022**, a landlord shall not evict a tenant except in accordance with the terms of the tenancy agreement, short of which the tenant is entitled to pursue an action against the land in a court of law or an equivalent to three months rent payable. In the event that the court finds the landlord liable, in addition to the above-mentioned orders, the court may make an order for damages to be paid to the tenant by the landlord.<sup>12</sup>

The Landlord and Tenant Act does not stipulate the procedure to be followed during land evictions in landlord and tenant relationships. The inference from Section 45(supra) is that the tenancy agreement shall stipulate the grounds and procedure to be followed in the event of an eviction. Therefore, the mode of evictions in these types of relationships has to be in accordance with the Interpretation Act.

## **4. Conclusion**

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<sup>8</sup> Rule 9 (ibid)

<sup>9</sup> Rule 14 (1) and (2) (supra)

<sup>10</sup> Rule 14 (6) (Ibid)

<sup>11</sup> Rule 18 (supra)

<sup>12</sup> Section 45 (2) and (3) of the Landlord and Tenant Act, 2022

In conclusion, it is imperative that judicial officers, court bailiffs and other stake holders uphold the principles laid down in the Directions. Failure to do so would surmount into illegal evictions. Therefore, it is the responsibility of the judicial officers, litigants, court bailiffs, police, local council leaders, advocates and other stakeholders to adhere to the directions and ensure that evictions and demolitions are carried out in a just and humane manner that respects the rights and dignity of all persons affected.

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