THE CHALLENGES OF DUAL *MAILO* LAND OWNERSHIP IN UGANDA.

A CASE OF CENTRAL REGION

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2014-MO62-20006

UGANDA MARTYRS UNIVERSITY

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A POST GRADUATE DISSERTATION PRESENTED TO FACULTY OF HUMANITIES AND SOCIAL SCIENCES IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE MASTERS DEGREE OF HUMAN RIGHTS

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DEDICATION

I would wish to dedicate this research study to my family members who endured my prolonged absence and financial inadequacies during the period of study. Special dedication goes to my wife Nakasinde Sylivia who had to take over family roles in my absence and ensured that all the children were attended to and nurtured both morally and physically. This enabled us to keep bound in body and spirit and sequentially kept the family light burning. Other people are my children Akello Annabbell Victoria, Otango Michael who had to question my continued outings during the study on the assumption that I was merely going out for normal duty whereas not. Finally I would also want to dedicate the same to my dependants who had to endure the delayed remittances of upkeep and other handouts which were geared towards enhancing their livelihood.

May the almighty God reward you all and may he continue to inspire you to be tolerant and supportive towards any noble cause.

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LISTS OF ABBREVIATIONS AND ACCRONYMS

A.D.R.	Alternative Dispute Resolution
BIDCO	Business and Industrial Development Corporation
C.I.D	Criminal Investigation Directorate
C.O.	Certificate of Occupancy
D.P.C.	District Police Commander
E.G.	Example
HRAPF	Human Rights Awareness and Promotion Forum
L.C.	Local Council
L.P.P.U.	Land Protection Police Unit
L.S.S.P	Land Sector Strategic Plan
P.F.	Police Form
R.D.C	Resident District Commissioner
R.P.S.A	Resident Principal State Attorney

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ABSTRACT

This study was geared at investigating the challenges of dual *mailo* land ownership in the central region of Uganda. The objective of the study was specifically to trace the genesis of dualism in *mailo* land which created the challenges of co-existence of landlords and the tenant in the same land with either side exerting usufruct rights interest in the land, to investigate the effect of *mailo* land tenure on the co-existence between the landlords and the tenants and to devise remedies to the shortcomings of the dual *mailo* land ownership. The area of study was central region with Luwero as the District of study and the information derived there from was to represent the rest of central region where dual *mailo* land ownership is most prevalent.

Relevant literature about the objectives of the study were reviewed and analysed. The information was got from sources like text books, internet, journals, official reports and legal documents. The researcher employed both quantitative and qualitative methods of data collection. Primary and secondary data was obtained in the course of the study and critically scrutinized during interpretation and analysis. The data collection instruments employed were questionnaires and interview guides which were administered to a total of 63 respondents who were stakeholders in the lands administration in Luwero district, the land owners as well as the tenants who are constantly faced with the challenges of dual co-existence under this arrangement.

The study revealed that *mailo* land tenure was the creation of the colonialists and the dual existence came up when the colonialists divided the land among the cultural leaders and themselves leaving the common man as tenants in the land which they once owned. They were also tasked to cultivate some specific crops to run the colonial master's industries. This was discovered to have brought a lot of conflict between the tenant and the landowners such that each one started executing claims over the use of that land. The study therefore designed some probable solutions to the problems derived with the hope that it would be admissible in solving other existing and later future disputes emanating from dual *mailo* land dispute.

The study also cited some of the most commonly committed crimes in the *mailo* land disputes such as fraud, obtaining money by fraud, malicious damage and criminal trespass. These were computed and presented in tabular, graphical and diagrammatical outlay for ease of interpretation and analysis of the data.

The study concluded by citing remedies to the challenges of dual *mailo* land tenure which among others includes involvement of local and cultural leaders, massive sensitization of the masses on land/*kibanja* laws as well as institutions mandated to handle land matters. The researcher finally recommended further study in the areas which could not wholly be investigated in the course of the study for instance the co-relation between *mailo* land and customary land, challenges encumbered in other land tenures and he called upon other researchers to explore in depth study in those area with the intention of filling the knowledge gaps in them.

CHAPTER ONE:

GENERAL INTRODUCTION

1.0. Introduction

This dissertation was divided into five chapters. Chapter one was primarily about the introduction into the study topic which was subdivided into general introduction into the whole proposal topic, introduction into the chapter, the background into the study topic and the statement of the problem. The chapter further indicated the study objectives which was sub divided into general objectives, and specific objectives. The research questions, significance of the study and the scopes were chronologically outlaid. The scopes were broken down into conceptual, geographical and time scopes and finally the conceptual framework of the research was equally presented.

Chapter two majorly captures literature on the concept of land ownership, types of Land ownership in Uganda which was divided into customary, *mailo*, freehold, leasehold and public lands, as well as the origin of *mailo* land in Uganda. The researcher also cited literatures on how dual *mailo* land ownership has promoted conflict between the landlords and the sitting tenants. The researcher then concluded by intimating some probable remedy to the challenges to dual *mailo* ownership.

Chapter Three is specifically on research methodologies which have been broken into introduction to the chapter, research design, study area and the study population. The chapter also showed the data collection tools which included the interview guide and questionnaires. Data sources, sampling procedures, tables of sample population, data processing, quality control management and processing and analysis were as well spelt out. The researcher also spelt out ethical considerations, anticipated limitations and anticipated solutions to the limitations during the study.

Chapter four of the study centered on the data presentation, analysis and interpretation. The researcher outlaid the data collected in tabular, graphical and diagrammatical format. Other data were presented in narrative format for ease of giving typical format and source of the information and analysis there from. The researcher also critically analysed the data collected

against the topic under study vis a viz the research specific objectives. The interpretations of such information were done in a logical and systematic framework and in simplistic format for ease of perusal and conceptualization of other readers.

Chapter five was purely on data summary, conclusion and recommendation. The researcher summarized the data collected and tabulated it by giving a clear outlay of the commonly committed crimes during the period of study and the breakdown of the frequency of the commission of the crime. The researcher also made sense out of the retrieved information by comparing it with what was asserted by other scholars on the same subject matter. The study concluded by giving recommendations on areas of further research as every aspects of the study could not be exhausted in the course of the study.

1.1. Background to the Study

Land is a primary input and factor of production which is not consumed but without which no production is possible. Although its usage can be switched from a less to more profitable one, its supply cannot be increased.

The term 'land' includes all physical elements in the wealth of a nation bestowed by nature; such as climate, environment, fields, forests, minerals, mountains. As an asset, it includes anything;

- on the ground(such as buildings, crops, fences, trees),
- above the ground (air and space rights), and
- under the ground (mineral rights), down to the center of the Earth.

In this regard, its control, management and use, continues to be a critical factor in Uganda (Deininger. K and Castagnini. R, 2004).

Land tenure is the name given, particularly in common law systems, to the legal regime in which land is owned by an individual, who is said to "hold" the land (the French verb "tenir" means "to hold"; "tenant" is the present participle of "tenir"). The term "tenure" therefore is used to signify the relationship between tenant and lord, not the relationship between tenant and land as settlement on the land was at the discretion of the lord who owned the land.

Historically in the English system of feudalism, the lords who received land directly from the Crown were called tenants-in-chief. They doled out portions of their land to lesser tenants in

exchange for services, who in turn divided it among even lesser tenants. This process of granting subordinate tenancies is known as sub-infeudation.

Following the Norman Conquest in 1066, William I imposed a feudal structure on England. He was the owner of all land in England by conquest. He granted land to certain of his subjects in return for services and those subjects might in their turn grant that land, or parts of it, to others, again in return for services. Each occupier of land therefore held the land of his lord, that is, the person to whom he owed services. That lord owed services to his lord and so on up the pyramid to the Crown. This method of holding land was tenure (Edmond Cheung, 2012).

The concepts of landlord and tenant have been recycled to refer to the modern relationship of the parties to land which is held under a lease. It was pointed out by Professor F.H. Lawson in his *Introduction to the Laws of Property* (1958), however, that the landlord-tenant relationship never really fitted in the feudal system and was rather an "alien commercial element".

When Europeans first came to North America, they sometimes disregarded traditional land tenure and simply seized land; or, they accommodated traditional land tenure by recognizing it as aboriginal title. This theory formed the basis for treaties with indigenous peoples.

In Australia, native title is a common law concept that recognizes that some indigenous people have certain land rights that they derived from their traditional laws and customs. Native title can co-exist with non-indigenous proprietary rights and in some cases different indigenous groups can exercise their native title over the same land. It is because of the relationship between a person and the land in which he or she has an interest is fully described by the legal rights he/she has in that land, that we designate this element as the proprietary unit (proprietary means 'belonging to an owner', or 'held as property').

Around 1897, the East Africa Land Regulations were adopted; these enabled the British Protectorate authorities to alienate land for settlers. Contrary to earlier opinion, it was now believed that the British Crown could obtain radical (or ultimate) title to the land in a British Protectorate if there was no “settled form of government” present. The British Protectorate authorities assumed full ownership over all land in East Africa.

Whereas private estates known as *mailo* land tenure system in Buganda and native freehold in Toro and Ankole were equated to the English freehold, these were granted to the traditional rulers and their functionaries through numerous agreements like the 1900 Buganda Agreement and the Tooro and Ankole Agreements (Rugadya, 2003).

According to Brainshare, 2016, before the Buganda agreement, all the land belonged to the traditional king - the "Kabaka" and it was the control of land that increased Kabaka's powers. But under the 1900 agreement, Buganda's land was divided into 3-ownership control. This was mainly dealt with under article 13 that talked about land issues:

i. The freehold land was allocated to the peasants by the British government.

ii. The *Mailo* land was given to the royal family, ministers and the Baganda chiefs. It was called the *Mailo* land for it was measured in miles. This was estimated to be about 5000 Sq. Miles of land and was the fertile land in Buganda.

iii. The Crown land was retained by the protectorate government. It was also half of Buganda's land. It included the forest areas, all the wasted land that wasn't taken by the chiefs. Crown land represented the most infertile land in Buganda and later 'turned out to be useless. It was in the land clause that the Baganda chiefs benefited at the expense of the protectorate government as they controlled the most fertile land of Buganda.

Mailo or "native freehold" land was also distributed to chiefs and notables in the Ankole and Toro kingdoms (although to a much lesser extent than in Buganda). The Ankole Landlord and Tenant Law and the Toro Landlord and Tenant Law were passed in 1937, regulating payments of rent and tribute in these kingdoms (Land Ordinance of 1923, No. 3, Cap. 113).

At the time of creation of *mailo* and native freeholds, pre-existing private interests of smallholders, mainly land use rights were not legally recognized. Despite attempts to rectify this, with the enactment of the *Busuulu* and *Envujjo* Law of 1928 for Buganda and similar laws in Ankole and Tooro in 1938, the multi-layered structure of rights persisted and has become a defining characteristic of the complexity of land relations in Uganda today. It has been largely blamed for the escalating land conflicts and evictions in the central region where resolving

dual interests of ownership between the registered owner and the lawful or bonafide occupants is nearly impossible, in addition to mediating and sustaining relations for harmonious co-existence, that is untenable (Muyomba N, 2015).

The landlord-tenant relationship as enacted under the Land Act, (Cap 227) has become controversial around three issues: the definition of bonafide occupant, the rights conferred on the tenants and the rent payable. The Land (Amendment) Act, 2010 attempted to address these issues although some remain unresolved.

Essentially feudal in character, the *mailo* tenure system recognizes occupancy by tenants (locally known as *bibanja* holders) and like freehold, is registered under the Registration of Titles Act. All transactions must therefore be entered in a register guaranteed by the state. Under this tenure, the holder of a *mailo* land title has absolute ownership of that land. One only loses such ownership when such land is needed for national interests but still amicable compensations have to be done for a peaceful relocation (The Uganda National Land Policy, 2011).

Mailo tenure and "native" freeholds, separate the ownership of land from occupancy or ownership of developments by "lawful or "bonafide" occupants. This creates conflicting interests and overlaps in rights in the same piece of land. The definition of rights accorded to bonafide occupants in the Land Act (Cap 227) and all the subsequent amendments, lack legitimacy on part of the land owners. The Land (Amendment) Act 2010 grants statutory protection to the bonafide and lawful holder and his or her successors against any arbitrary eviction as long as the prescribed nominal ground rent is paid. However, the nominal ground rent provided for, as opposed to economic rent is largely ignored, creating a land use deadlock between the tenants and the registered land owner, leading to conflicts and many times evictions. The landlord-tenant relationship as legally regulated is not amicable or harmonious and is non-operational (National Land Policy 2011).

The co-existence of the land owners and the tenants in their land created conflict of interest over superiority on who had the upper hand in utilizing the land. The landlords claimed more powers on the assertion that they held the land titles and had unquestionable user rights, the tenants on the other hand claimed perpetual user authority as long as they paid *busuulu* and *envujo* fees. But the said payments more especially the amount and the default rate made the collectors to lose

interest and opted for sole ownership and use for the sake of reducing future conflict (Bosworth, J).

This background explores linkages between land conflict and Uganda's system of land tenure, including the rights and institutions that govern access and use of land as well as the legal instruments regulating the forms of tenure under investigation.

1.2.0 Explanation of Key Concepts

1.2.1 Tenant

A tenant is someone who pays rent to use land or any occupant who dwells on land. In dual ownership, the tenant pays nominal rent (*busuulu*) to the landlord for the use of land for a specified duration of time say a year.

1.2.2 Land Tenure

The word tenure is derived from the Latin *tenere*, to hold. A tenant is one who holds, and tenancy is holding. In common usage of the terms a tenant is distinguished from an owner, the tenant is a lessee and the owner the lessor of landed property. However, land tenure means the holding of land, and the term tenant includes owners, lessees and other occupiers of the land. Is a system in which individuals or group, can access land, stay with it or even use it and later dispose it off upon payment of the requisite regular user right fees. Dual *mailo* tenants legitimize their tenure by paying rent for as long as they enjoy the use of the land. But they can as well convert into landowners by negotiating with the landowner on agreed terms or withdraw from the land then the portions under use reverts back to the landowner.

1.2.3 Lawful Occupant

1. A person who entered the land with the consent of the registered owner, and includes a purchaser; or
2. A person who had occupied land as 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.

1.2.4 Bona fide Occupant

Bona fide generally means good "*faith*". A person who before the coming into force of the 1995 Constitution on the 8th day of October had occupied and utilized or developed any land

unchallenged by the registered owner or agent of the registered owner for twelve years or more; or had been settled on land by the Government or an agent of the Government which may include a local authority. This is a person who settled and used the land before 8th October 1983. Lawful and bonafide occupants cannot be evicted from the land without compensation. They have rights to negotiate their tenancy with the landlords by either paying nominal use rent, buying off shares into land, sell of shares to the landlord or share the portion with the landlord so as to attain a status of independent landowners. They can as well bequeath, rent, sublet or mortgage their shares to other people.

The following categories of people are not protected by this; unlawful occupants; illegal tenants; trespassers; squatters.

1.2.5 Licensees;

These are persons temporarily brought in by the land owners to utilize the land; licensees does not have legitimate claim of ownership over the portions they are entrusted to utilize and are not sublet such portions to another person.

1.2.6 Lessees;

These are persons with oral or written agreements with the land owners to temporarily occupy or use the land for specific period of time; this includes persons who hire a portion of land from the landlord for utilization for agreed period of time thereafter the land reverts to the landowner. For instance People renting agricultural land; People renting premises. Lessees' ceases claim over their portions as soon as their terms ends and are expected to cooperate with the landowner in the course of their occupancy.

1.2.7 Squatters

This group, known as "squatters", includes all those who occupied land after 1983, even if they had lived on and used the land undisturbed by the owners. It includes those who used the land without the consent of the registered owner but without putting any claim of ownership over the same land and would be instructed to leave without any compensation.

1.2.8 Illegal Land Eviction

Illegal land eviction is any forcible removal of a tenant, directly or indirectly, without prior court approval. Illegal eviction involves the use of threat or use of violence; a landlord's attempt to make land unlivable in the hope that the tenants will leave.

1.2.9 Dual Ownership

This is a form of land holding where more than one person has rights over the use of a piece of land. This includes the landlord who holds the right to own and use the entire land; as well as the tenant (*kibanja*) holder who is entitled to utilize the land but with the mandate of paying use rent to the land owner.

1.2.10 '*Kibanja*' (singular) or '*Bibanja*' (plural)

A piece of land over *mailo* land the holder of which has no certificate of title for it and hence the land owner still demand for fees for the use of such a portion. It is not officially documented. Persons claiming ownership or occupancy of a portion in land are termed *bibanja* claimants/owners.

1.2.11 *Mailo* Land.

"*Mailo*" a luganda word loosely translated as "Mile". It was called *Mailo* land for it was measured in miles. This land was estimated to be about 5000 Sq. Miles and was the fertile land in Buganda.

1.3. The *Busuulu* and *Envujo* Law, 1928

Brainshare, 2016 asserts that the relationships between the *mailo* owners and the peasants (tenants) which gave rise to dual ownership were not defined in either the Uganda Agreement 1900 or the Land Law, 1908. The position of the peasant holders in the new scheme of land relations took some time to crystallize into what might be called a legal form. The peasants continued to assume exactly the same feudal relationships to the *mailo* owners as they were used to assume under the old type of kinship or political chiefs. This was not particularly difficult because the same individuals, who either were or might have become chiefs before, were now the *mailo* owners. The *mailo* owners ruled and dispensed justice in the traditional manner and in

return they expected, and received, the same type of services and dues from their tenants as previously were commonly accepted.

A new situation, not provided for by law or custom, arose with the introduction of cotton as an economic peasant crop especially after the 1914-18 war when the price of cotton rose to Sh. 33/- per 100 lbs. The peasants began to derive economic gain from their holdings and the *mailo* owners began to exploit the peasants for economic reasons.

The exploitation took the form of either demanding the use of the customary labor due from the peasants on the cotton fields of the *mailo* owner or of demanding a portion of the cotton produced or its money equivalent.

Some of the *mailo* owners were definitely rapacious in their demands and it caused great discontent among the peasants on their estates. At about the same time, the dissatisfied sections of the community organized themselves into what was known as the *Bataka Association.* This association consisted of a number of kinship heads, and a far greater number of political malcontents, who were driven together mainly by opposition to Sir Apolo Kagwa, the Prime Minister, and his Government. The chief complaint of the association was that the allotment of *mailos* was unfair in so far as it favored the chiefs against the other claimants to the control of land. But the greatest injustice was considered to be the way the paper claims were converted into rights over actual land. The big chiefs, whose claims were naturally considered first, came into possession of the biggest and the best villages in complete disregard of the rights of occupation and cultivation of the minor chiefs and of traditional associations to certain villages by certain people. It was also expected that now that the Kabaka had assumed power after a long period of regency, he would be able to adjust these claims in opposition to his powerful minister. But when the Kabaka confessed to his constitutional inability to effect a change without legislation by the *Lukiiko,* further appeals were directed to the Protectorate Government. I suspect that the uncertain claims to rights prior to the Kabaka's reign that were put forward by some of the members of the *Bataka Association* were advanced to impress the Europeans.

A commission set up to investigate the matter found that there were definite injustices. In some cases, kinship heads who were allotted *mailos* could not assert their claims to traditional lands because they were now owned by one or other of the big chiefs. In other cases the rightful

claimants to clan lands were passed over because they were either not Christians or because they had not the necessary political influence. Redistribution was therefore considered justified, but in practice, this was found impossible owing to the great number of interests involved. The Government instead decided to initiate legislation to protect the peasants on their holdings. The *Busulu and Envujo Law 1928* were therefore enacted (Brainshare Last Modified on: 07 Mar 2016).

Whereas a lawful occupant has a relationship acceptable to and respected by the landlord resulting from the manner in which the tenancy was created, i.e. through the historical payment of *Busuulu* and *Envujjo* in Buganda and similar fees in Tooro and Ankole, the issues surrounding the bona fide occupants are contentious. Because the concept of bona fide occupants is proof based, the burden of proof seems to be on the landlord seeking to evict to prove that this person was not on that land by 8th October 1983. This is almost impossible for any landlord to prove taking into consideration the fact that at the time all land was public land and everybody was a tenant at sufferance save for those who had leaseholds. This therefore, gave people the leeway to settle on land with impunity and lay claim to it. Furthermore, many “bonafide occupants” settled on land after 1983 but it is almost impossible for the landlords to prove this because at the time the law did not require this. The law is therefore acting in retrospect, which disadvantages one group in this case, the landlords and ignores the common law principle that laws do not act retrospectively (Muyomba N.).

While the rights of "*lawful* and *bona fide*" tenants on *mailo* land were clarified by the Land Act 2010, this still left a significant category of occupants of *mailo* land uncovered by the Act and unprotected. This group, known as "squatters", includes all those who occupied land after 1983, even if they had lived on and used the land undisturbed by the owners. Based on the law of limitation, which permits title to be claimed only after 12 years of undisturbed occupation, all those who occupied after 1983 are required to take steps to identify the owner and negotiate their occupation.

Generally, the 2010 Tenancy reforms attempt to revert back the *Busuulu* and *Envujo* Law, 1928. It revolves around two major issues; the rights conferred on the tenants and the rent payable. It guarantees statutory protection to the *kibanja* holder and his or her successors against any

arbitrary eviction as long as the prescribed nominal ground rent is paid. This eviction can only be enforced with a court order. The Land (Amendment) Act of 2010 under section 35A and B respectively criminalizes or declares any transaction engaged in by the landlord without first option to the tenant or the tenant engaging in any transaction without giving first priority to the Landlord.

The Land (Amendment) Act has however encountered resistance and generated debate in a wide section of the population. A lot of issues have been raised against it.

- It introduces criminal intent in a relationship that was previously civil in nature, a condition that furthers tensions between land owners and their occupants.

- The nominal ground rent provided for as opposed to economic rent is also a bone of contention. The landlords feel cheated because the Land Act Cap. 227 legalized an illegitimate acquisition process, one that did not involve the owner's consent and automatically takes away the land owner's right to negotiate fair tenancy terms.

Some even argue that the law has failed to address the structural problems that continue to sour the landlord-tenant relationship. It has created a scenario of dual permanent landownership where occupancy equates to ownership. Landlords cannot develop or use their land because tenants are in occupation. On the other hand, the tenants themselves cannot extensively advance land production through investment hence creating a land use deadlock. This deadlock has impacted on the landlord-tenant relations and also had a direct effect on development and investment. However, not all has been bad with this Act. There are sections of the population who still support it, many of whom are tenants (ibid).

1.4.0 Land Tenure System in Uganda

Uganda has a total area of 241,038 sq. Km, with a land area of about 236,000 sq.km comprising cultivated areas, arable but uncultivated land, and rangelands and built up areas. It can therefore not be overemphasized that land is a fundamental factor of production and is Uganda's prime and critical asset in development.

Originally land in Uganda like all pre-colonial Africa was held on communal basis and this mandate was at times vested in traditional leaders where they existed. In the wake of imperialism however, its European perpetuators sought to delineate portions of this land for commercial purposes in the most grueling resource exploitation to date. They therefore used agreements and at times more compelling avenues to extend alien land holding systems and modified their African replicas into a confused hybrid of tenure (Dr. Liz Wily, May 1998).

Bomuhangi A. C and Meinzen-Dick D. R. (2011) assert that in Uganda, according to the 1995 Constitution and the 1998 Land Act, land is managed under four basic land tenure regimes: customary, *mailo*, freehold, and leasehold. These regimes confer different land rights to the owners and therefore have different implications on security of tenure. A fifth tenure system applies to public lands. The researcher has therefore outlaid these land tenure as below;

1.4.1 Customary Tenure

The most common tenure system in Uganda is customary tenure, which the Land Act recognizes as governed by customs, rules, and regulations of the community (Uganda, Ministry of Lands, Housing and Urban Development 1998). In this system, landholders do not have a formal title to the land they use, although Article 237(4) (a) of the 1995 Uganda Constitution stipulates that all Ugandan citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament. More than 80 percent of the land in Uganda is held under unregistered customary tenure. Despite the lack of registration, customary tenure is recognized by the state (Article 237(1) of the 1995 Constitution of Uganda).

1.4.2 Freehold Tenure

Freehold tenure is a system whereby owners of the land have a deed to their land that allows them to hold the registered land indefinitely. Landowners are given complete rights to use, sell, lease, transfer, subdivide, mortgage, and bequeath the land as they deem fit, so long as it is done in a manner consistent with the laws of Uganda. These rights are well respected by the state. However, freehold interests in land are not widespread; they were formerly established and limited to a small category of individuals, kings, notables and chiefs; large-scale agricultural

estate developers; and some special interest groups such as the Protestant and Catholic churches (Bikaako and Ssenkumba 2003).

1.4.3 Leasehold Tenure

In the leasehold tenure system, the owner of the land grants the tenant exclusive use of the land, usually for a specific period of time. Land may also be leased from the state to individuals for typical lease periods of 5, 45, or 99 years. In return, the tenant usually pays an annual rent or service under specified terms and conditions. Leaseholders may or may not hold formal contracts with the owner.

NB: Other forms of tenure are, however, exclusive only to Ugandan citizens; leaseholders can be but is not limited to non citizen.

All these forms of land tenure are cumbered with *kibanja* tenancy and the landlords are by law required to accommodate these tenants or settle them commensurately.

1.4.4 Public Tenure

In addition to the four main tenure categories above, public tenure applies to lands that are designated for public use. This includes but not limited to only land for public buildings and roads but also all designated wetlands, even if these fall within otherwise designated customary or *mailo* lands. These lands have restrictions on use, such as prohibitions against cultivation and other uses of wetlands.

1.4.5 *Mailo* Tenure

Established in 1900 by the British colonial government to reward colonial agents who advanced British interests with large estates of land, *mailo* tenure is a quasi-freehold tenure system found in the Central region and parts of central Western Uganda. *Mailo* ownership rights are well recognized by the state (Article 237(1) of the 1995 Constitution of Uganda). An important feature of *mailo* systems is that much of the land is used under a *kibanja* tenancy system (peasant tenancy), which may or may not be documented with *kibanja* certificates. Tenants do not hold full ownership rights; they must pay rent to the *mailo* owner (*Busuulu* and *Envujjo* law of 1927) and face some restrictions on what they can do on the land.

Because of the controversies in the 1998 tenancy reforms together with many other factors, evictions and land related conflicts escalated. In response to this, the government set out to try and address Uganda's land tenure issues through the amendments of the Land Act (2004) and (2010) and the formulation of the National Land Policy. The Land (Amendment) Act of 2004 was enacted to streamline the administrative structures of the land administration system. The Land (Amendment) Act of 2010 on the other hand, was enacted to rectify the landlord-tenant impasse and hence help curb the incessant evictions that have become part of the definition of contemporary Uganda. It has strengthened tenants' rights by limiting the rent they must pay to a nominal amount and have made it more difficult for *mailo* owners to evict the tenants. The *kibanja* tenants have rights indefinitely.

The researcher therefore explored into these different types of ownership with the intention of establishing origin of *mailo* land tenure system, the challenges of *mailo* land tenancy on the landlords and the sitting tenants in terms of conflicts and the appropriate remedies to the challenges.

1.5 Statement of the Problem

Uganda's dualist *mailo* land tenure system is believed to have come from far more especially due to the 1900 Buganda Agreement and it is believed to be the root cause of conflict over land use and ownership. The current dual land tenure laws promote land alienation, threaten livelihoods and contribute to insecurity.

Perhaps the most critical and challenging elements courtesy of colonial legacy is to do with the removal of multiple tenure rights and interests overlapping in the same piece of land. The question lies in determining who holds superior rights over the other, the tenant or the landowner? In addition, one of the interests has to be extinguished in order for peace to prevail; the terms and mechanisms for this dissolution and transition (including the costs) must be defined. Given the nature of land disputes in Uganda, reform was needed to move forward and develop a land tenure system that works for the country.

Based on the reports derived from the police annual crime statistics 2010 to 2015 and media reports on land clashes in central region which mostly originates from dual ownership, the researcher was motivated to explore on the causes of these rifts such as the Zion Estates-Tenants rift at Vvumba estate Kalagala sub county in Luwero district as well as the Kalangala Palm oil project-tenants clashes in Kalangala district and to design appropriate remedy to the same. The reason for this study was therefore to probe the origin of the *dualism*, the challenges faced by the landlords and the tenants in claiming for their user rights and to determine who actually holds more power than the other; this would also help the researcher to devise remedies to the challenges there from (Ssemutooke J, 2015, Okuku 2005).

1.6.0 Objectives of the Study

1.6.1 General Objective

The main objective of the study was to establish the challenges of dual *mailo* land ownership on the land lords and the tenants.

1.6.2 Specific Objectives

i. To track the origin of dual *mailo* land ownerships in Uganda

ii. To investigate how dual *mailo* land tenure has affected the co-existence between the land lords and the tenants.

iii. To devise appropriate remedies to the short comings of dual *mailo* land tenure if any.

1.7.0 Research Questions

1. What is the genesis of dual *mailo* land tenure in Uganda?
2. How has the dual *mailo* land tenure system affected the co-existence between the landlords and the tenants?
3. On the basis of the challenges derived in dual *mailo* land ownership, what are the possible remedies to address the limitations there from?

1.8.0 Scope of the Study

1.8.1 Conceptual Scope

This study was based on the concept of dual *mailo* land ownership in Uganda and the challenges of dual *mailo* land ownership to both the landlords and their tenants. The researcher investigated the genesis of *mailo* land tenancy, ascertained the challenges therein and devised appropriate remedy to the problems established therein for the benefit of the land owners, their tenants and the entire stakeholders involved in offering redress to land related matters.

1.8.2 Geographical Scope

The study covered central part of the country more specifically Luwero district since this have been the areas where land disputes over the dual ownership were deeply rooted. The outcome of the study is to represent the rest of the central region.

1.8.3 Time Scope

The research covered a period of five years effective 2011 to the year 2015 on the strength that this was the time frame during which disputes were massively reported between the landlords and the tenants as evidenced with police annual crime statistics 2011-2015 and the frequent landlords-tenants disputes in Kalangala district and at Vvumba-Kalagala in Luwero district.

1.9 Justification of the Study

Uganda is an interesting case to assess the impact of land conflict because of the presence of many of the economic and institutional factors which, according to the literature, provide a basis for the emergence of land conflicts and because of recent efforts to establish a new legal framework to reduce such conflicts.

While the country shares with other African countries a relatively high level of population growth of 2.9% in the 1965-1998 period (World Bank 2002) that has led to increased land scarcity, it is also characterized by considerable regional diversity. Population densities vary from 12 per km2 in the North to 282 per km2 in the West (Mugisha 1998). Land tenure arrangements range from customary in most of the North to freehold in the South.

In contrast to customary tenure, Uganda's freehold, *mailo* and leasehold systems are based on individual ownership (Macpherson's 1964: 53-54), fitting a description of land ownership in the "global-western sense," where land is individually owned, with exclusive rights acquired through formal contractual arrangements between seller and buyer (Ault and Rutman, 1979).

The majority of Ugandans, however, perceive ownership of land in the "traditional African sense," according to a national survey where 75 percent of respondents claimed they owned land (Republic of Uganda, 2010); although 95 percent of Ugandans do not have land titles (Ministry of Lands, Housing and Urban Development, 2011: 174). In contrast the Ugandan government holds the view that land ownership in the "traditional African" sense is inefficient and delays development (Atwood, 1990; Ault and Rutman, 1979; Barrows and Roth, 1990). The government argues that this understanding impedes the transformation of the country from a

peasant-based culture to a modern economic society besides escalating conflicts among the land owners and their tenants (Republic of Uganda, 2010: 173).

This was reason enough to form part of this study area so as to ascertain whether the argument put by the Ugandan government stands the taste of time and if it can harmonize the relations between the land lords and their tenants.

1.10 Significance of the Study

The cases of land dispute have been prevalent in Uganda. In spite of various attempts by several organs to fight these vices, the incidents have been on the rise. Uganda Land Alliance, Uganda/Buganda Land Boards, Land Protection Police Unit, Land Tribunal and courts are some of the bodies put in place to respond to cases of land disputes in Uganda. But in spite of their existence, the matter has yet persisted and hence the cause of this study.

The researcher investigated the dual *mailo* forms of land ownership and established reasons why *mailo* land tenure conflicts are on the rise and how it has affected the land owners and the tenants in terms of co-existence and hence devised appropriate remedy to the challenges derived.

The outcome of this study is hoped to benefit the individual private land owners, the stakeholders in land offices, the law enforcement agencies and the private sectors dealing in land matters in Uganda.

The result of the study would be helpful to government as they are trying to derive means of resolving conflicts between landlords and their tenants.

1.11 Conceptual Framework

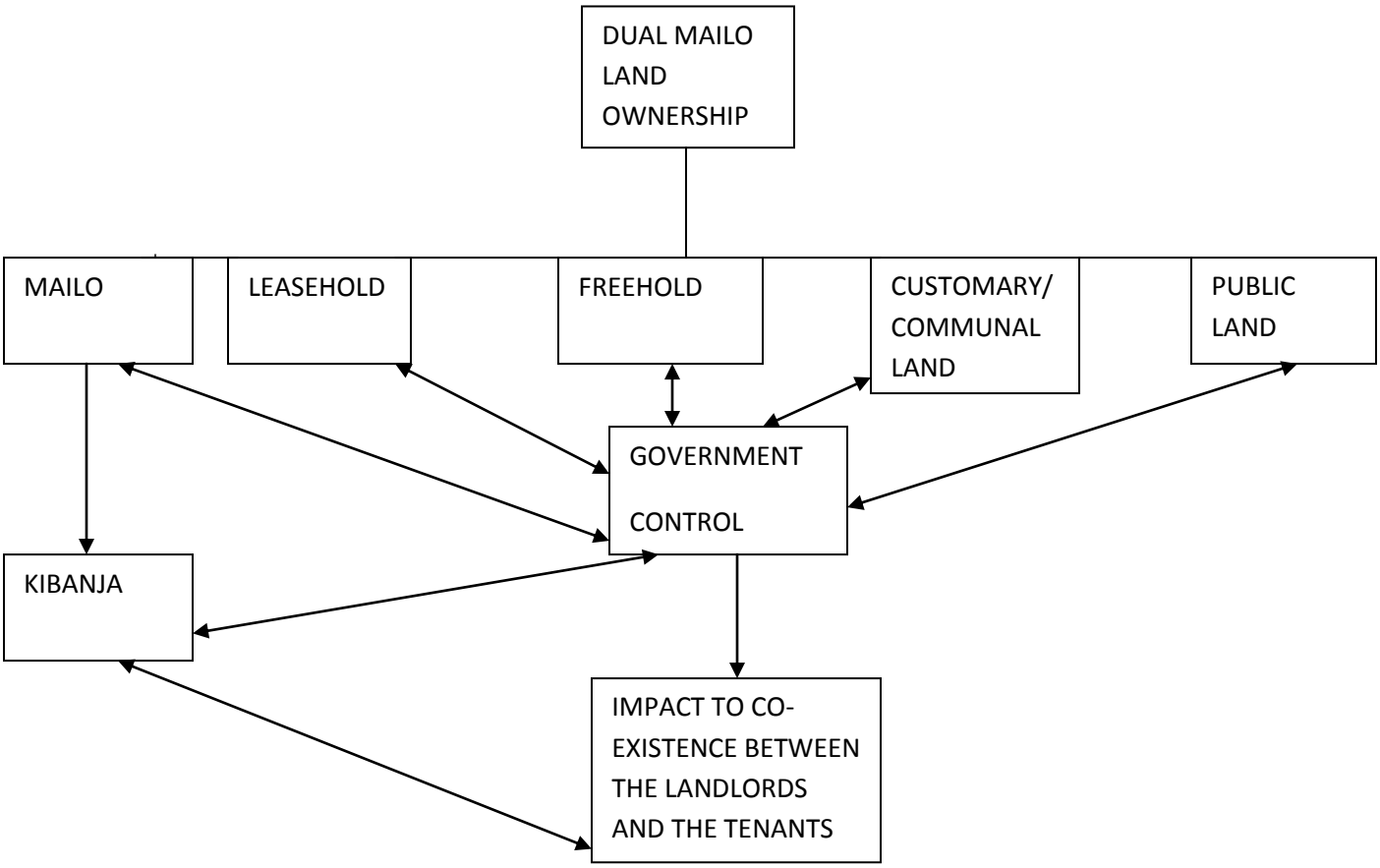
This study was rooted in the dual *mailo* land ownership in Uganda as the independent variable and why landlords and tenants are conflicting over issues of tenancy which seems to be affecting the co-existence between the landlords and the tenants as the dependent variable.

Irrespective of type, all forms of land ownership in Uganda i.e leasehold, freehold, customary/communal, public and *mailo* lands are under the supervision of government. All these

forms of land ownership bear the *kibanja* tenancy and land ownership is only proved by a certificate of title. The *mailo* land tenure has tenants (*bibanja)* holder as occupants with each side claiming power of use over the land. This brings conflict between the two claimants and hence the cause of this study.

The researcher picked special interest in *mailo* ownership, its origin, the conflicts imbedded therein which normally attracts government intervention in order to offer redress to the conflicts between the land owners and the *bibanja* tenants with the aim of studying the impact on the harmonious living between the landlords and the tenants and designing the solution to the cited problems.

This can be graphically presented as below:



CHAPTER TWO

LITERATURE REVIEW

2.0. Introduction

This chapter contains the existing literature on land ownerships in Uganda and the conflicting relationship between the *Mailo* landlords and the *Bibanja* owners. It also traces the origin of *mailo* land tenancy and its *Bibanja* occupants and gives a hint on the emerging conflicts in the said land tenure. The chapter also provides for the remedy to the conflicts arising from dual *mailo* land dispute. It is divided into definitions, origin of *mailo* land, challenges of *mailo* tenancy, possible solution and relevant available documents pertaining land disputes in Uganda.

2.2 The Genesis of *Mailo* Land Tenure in Uganda

Originally land in Uganda like all pre-colonial Africa was held on communal basis and this mandate was at times vested in traditional leaders where they existed. In the wake of imperialism however, its European perpetuators sought to delineate portions of this land for commercial purposes in the most grueling resource exploitation. They therefore used agreements and at times more compelling avenues to extend alien land holding systems and modified their African replicas into a confused hybrid of tenure (Diana Lee-Smith, 1997, pp. 123 – 124).

This is comparable with Swaziland which is characterized by two types of land tenure: land held in customary tenure, or Swazi Nation land (SNL); and land held by freehold tenure, or title deed land (TDL). The latter is sometimes referred to as individual tenure farms (ITF). The evolution of the dual system here is also traced back to the early 1900s. The present land tenure of Swaziland is a product of historical forces and has been shaped especially by those of the last 100 years. Until the last quarter of the nineteenth century, the Swazi monarchy controlled all the land through chiefs. Temporary land grants, mistakenly interpreted as permanent concessions, were first granted by Swazi rulers to South Africans during the colonial era. According to Swazi customary law, however, land could not be bought or sold by Swazi rulers (Rose, 1992). A dual land tenure structure which permeated the entire economic, political and social system arose out

of this misunderstanding. In 1907, land was designated as native reserves for the exclusive use of the indigenous population. The reserves, formally known as "Swazi Areas", constituted about one-third of the country. The remaining two-thirds of the land were distributed as Crown land and concession land. The loss of land through colonial legislation not only undermined the base of the Swazi rulers, but imposed a capitalistic system of production which was supported by cheap, plentiful local labour (Rose L, 1992).

The problem of "farm dwellers", commonly known as squatters, has been cited as an impediment to production in Swaziland. A great deal of controversy has centered around the relationship of farm owners and farm squatters. Farm owners argued that the presence of squatters has hampered development and production on their farms. On the other hand, the farm squatters feel that they have a moral right to inhabit land that belonged to their ancestors. Under common law, farm dwellers have no legal right to live on these farms; thus the farm owners could evict them whenever they deem fit. The Farm Dwellers Control Act of 1982 tried to spell out the rights of farm dwellers, including an agreement with the farm owner which outlines the conditions of the farm dweller's tenancy, limitations on eviction of farm dwellers and provision for a district tribunal to resolve disputes between farm dwellers and farm owners. There are still numerous reports of conflict between the two parties. It has been suggested that the problem is likely to worsen as a result of the government's "back to the land" policy, when there is not enough rural land for those who wish to settle there (Armstrong A, 1988).

The Chinese customary law on the other hand treats lessees as tenancy in common. Accordingly, the general guideline is that the lessees hold land as tenancy in common in equal shares. However, the Common Law presumption is that such co-ownership is joint tenancy. The conflict is resolved under S.9 of the Conveyancing and Property Ordinance (Cap 219), where after the commencement of the Ordinance (1/11/1984) a tenancy in the same estate or interest in land vests in two or more persons under an instrument or a will, it shall be presumed, unless the contrary intention is expressed in that instrument or will, that the tenancy vests in these persons as tenants in common rather than as joint tenants. This is synonymous with the dual ownership in Uganda where the tenant and the land owner exerts similar claim in the land over usufruct rights (Cheung E 2012).

As to an estate or interested in other land (e.g. for non-indigenous villagers or in new towns) vested in the New Territories prior to 1/11/1984 and where there is indication of separate shares against the names of such persons, it is safe to infer that they hold the land as tenants in common.

Before the 1900 Agreement, any personal land holding in Buganda was called a *kibanja*. The present day meaning of *kibanja* came after to differentiate it from titled land. In urban areas it is more commonly referred to as '*puloti*', (derived from the English word 'plot') to infer that it is meant for residential as opposed to agricultural purposes (Okuku 2006).

The origin of *mailo* land is mainly dealt with in article 13 of the 1900 Buganda Agreement in which Sir Harry Johnstone wanted to acquire as much land as possible for the protectorate government. This was because he hoped to discover mineral wealth in Buganda (Brainshare 2016).

Although this problem appears new to some; its origin is traceable historically to 1897 when Daudi Chwa II was crowned Kabaka of Buganda. The two-year old king could not have guessed that his powers in the kingdom he was inheriting and its land tenure system were about to be changed forever in three short years using a mere stroke of a pen.

Kabaka Chwa or more accurately, his three regents Stanislus Mugwanya, Zakaria Kisingiri and Apollo Kaggwa, and Chiefs of Buganda signed the 1900 Agreement between Buganda and the colonial power, Britain. This agreement was to establish clearly the powers of the Kabaka's government vis-a-vis protecting power and the limits of those powers and, paramount of all, to effect a land settlement which, by giving security of tenure, would lay the foundation for the economic growth of the Kingdom. Surprisingly under the agreement, the Kabaka not only ceased to be the absolute ruler of his kingdom and came to exercise such powers as were left to him under the supervision of the Governor, but he also lost overall ownership of its land and became owner of only 350 square miles of its terrain (Okoth O, 2002).

The 1900 Buganda Agreement precisely gave rise to the following types of *mailo* land tenure and land owners:

(i) private *mailo* (for notables for excellent services),

(ii) freehold (for Anglican Protestant and Catholic missions),

iii) Crown freehold (for the Colonial Government), measuring 9000 square miles [now called '*mailo akenda'*] which reverted to the Buganda Kingdom Government upon Uganda gaining political independence,

(iv) official estate (attached to offices i.e. that of Kabaka, the *Katikkiro* (Prime Minister), *Omulamuzi* (Chief Justice), *Omuwanika* (Treasurer), *Ab'amasaza* (county chiefs) and *Abamagombolola* (sub-county chiefs),

(v) clan *mailo* (land held by clan heads, after they had agitated, for the benefit of their clansmen,

(vi) leases (for those with limited term ownership on any of the above types of land), and

(vii) *Bibanja* (for *abasenze* i.e. tenants on any of the preceding types of land) (Bossa. J, 2013).

Article 15 of the agreement gave the following breakdown of the distribution of *mailo* land in Buganda;

"The land of the Kingdom of Uganda shall be dealt with in the following manner: Assuming the area of the Kingdom of Uganda, as comprised within the limits cited in this agreement, to amount to 19,600 square miles, it shall be divided in the following proportions:

	Square miles
Forests to be brought under control of the Uganda Administration	1,500
Waste and uncultivated land to be vested in Her Majesty's Government, and to be controlled by the Uganda Administration	9,000
Plantations and other private property of His Highness the Kabaka of Uganda	350
Plantations and other private property of the King's mother (*Namasole*) (Note.-If the present Kabaka died and another *Namasole* were appointed, existing one would be permitted to retain as her personal property 6 square miles, passing on 10 square miles as the endowment of every succeeding *Namasole*.)	16
Plantations and other private property of the *Namasole*, Mother of Mwanga	10
To the Princes: Joseph, Augustine, Rarnazan, and Yusufu-Suna, 8 square miles each	32

For the Princesses, sisters, and relations of the Kabaka	90
To the *Abamasaza* (chiefs of counties), twenty in all 8 square miles each (private property): 160	320
Official estates attached to the posts of the *Abamasaza*, 8 square miles each: 160	
The three Regents will receive private property to the extent of 16 square miles each: 48	96
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	
Mbogo (the Muhammedan chief) will receive for himself and his adherents	24
Kamswaga, chief of Koki, will receive	20
One thousand chiefs and private landowners will receive the estates of which they are already in possession, and which are computed at an acreage of 8 square miles per individual, making a total of	8,000
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
Land taken up by the Government for Government stations prior to the present settlement (at Kampala, Entebbe, Masaka, etc., etc.)	50
Total	**19,600**

After a careful survey of the Kingdom of Uganda has been made, if the total area should be found to be less than 19,600, then that portion of the country which is to be vested in Her Majesty's Government shall be reduced in extent by the deficiency found to exist in the estimated area."

It was in the land clause that the Baganda chiefs benefited at the expense of the protectorate government as they controlled the most fertile land of Buganda (Brainshare).

The *mailo* land tenure granted to the chiefs and the notables was what was known as freehold in England, i.e. absolute ownership without time limit. As it was parceled out in measures of square miles, the word 'mile' was localized into *kiganda* vocabulary '*mailo'* and hence *mailo* land. This perhaps was for ease of memory and to differentiate it from the freehold which was granted to the peasants.

Even though over time these square miles were sub-divided into ever smaller pieces, the name '*mailo'* has been retained to refer to the land derived from these square miles and '*Kibanja'* (singular) or '*bibanja*' (in plural) meaning a piece of land over *mailo* land the holder of which has no certificate of title for it. It is not officially documented.

Under sub sec. (a) of section 2 (Buganda Possession of Land Law), there was a prohibition from owning more than 30 square miles of *mailo* land, whether by one self directly or by others for someone, except with the approval in writing of the Governor and the *Lukiiko* (Buganda Parliament). Therefore individual holdings of *mailo* were not to exceed 30 square miles and each square mile was computed as equivalent to 640 acres. The Buganda Possession of Land law 1908 prohibited a *mailo* owner from transferring land to a person who was not of Ugandan origin without prior consent of the Governor and the *Lukiiko*.

The Buganda agreement was intended to strengthen the positions of the protectorate government at the expense of Buganda's Sovereignty. It greatly undermined the position of the Buganda King (Kabaka), provided a background for establishment of colonial rule in Buganda in particular and Uganda in general i.e it acted as a nucleus for the colonization of the rest of Uganda (ibid). Perhaps this was aimed at creating divisionism among the people for ease of colonization under divide and rule policy.

Historical records show that the first *mailo* title was issued on the 2nd of January 1909 though by 1964, the total number of titles issued was 48,519 (forty eight thousand five hundred nineteen). These grants under the Buganda Possession of land law, 1908, were in the nature of freehold. The new system thus cemented individual title ownership. The 1900 Agreement, however, did not define the nature of the estate (tenure) that had been granted to the Kabaka, Chiefs, etc. It was not mentioned in the agreement as to what was the character of the grant. The agreement

was pre-occupied with the question of acreage. It was not until 1908 that *Mailo* tenure was actually defined in the Buganda Possession of Land law, 1908. Under Section 2 thereof, for the first time the word *'mailo'* which is derived from the English word 'mile' was coined (out of a corruption of the English word) to refer to land which the government had surveyed and recognised as belonging to someone (Mwebaza R, 1999).

But according to Jonathan Tibisasa, (July 2002), the *Mailo* land owner held land rights in his land akin to those of free hold. He was free to sell all or part of his holding and to pass it to his successors either under customary inheritance procedures or through a will. Approximately half of Buganda (more than 8,000 square miles) became formally privatized, despite the fact that these *mailo* estates were already settled by small holders under customary tenure, whose usufruct (land use) rights were not legally recognized. The Buganda Possession of Land law 1908 prohibited a *mailo* owner from transferring land to a person who was not of Ugandan origin without prior consent of the Governor and the *Lukiiko*.

However, *Mailo* land, initially sub-divided to benefit the children or relatives of the original allocatees (chiefs) was fragmented further and transferred to even persons outside the family circles of the original allocatees in exchange for money, as the economy became more monetized, and other considerations such as patronage.

Thus, gradually, *mailo* ownership by allocation and inheritance became *mailo* ownership by purchase. Today, most of *mailo* land is probably no longer in the hands of the descendants of those to whom it was allocated originally, or Baganda for that matter, but those who acquired it through purchase. Proponents argued that this created a progressive culture of private land ownership which spurred land use and economic growth in Buganda in the decades that follow (Edward Mwebaza). To the researcher this purchase could have led to the emergence of people who could not accommodate tenants therefore sparking the rift between the landowners and the tenants.

In further criticism, allocation of the original *mailo* holdings in the early part of the century was made without regard to pre-existing rights of occupancy and ignored the presence of peasant cultivators whose tenancy rights were recognised under customary system of land tenure. These

people, who had been occupying the land in different capacities, that is, as *bibanja* holders at the King's pleasure; as Chiefs (*Butongole*); as part of *Butaka* (clan) land, now had to adapt to a new system where they had a landlord directly over them and possessing the title to the land. They therefore could no longer hold their land as they traditionally did but under the dictates of the new *Mailo* system. Other persons who wanted to settle on *mailo* land had to approach the *mailo* owner and get permission to occupy a specific piece of land on terms agreed with the landlord.

Initially, most tenants paid little or no rent and labour services, particularly on large estates. *Mailo* owners were considered lords of their area and their tenants were their servants. Even though *mailo* owners permitted peasants to retain possession of the land (called *kibanja*) they were occupying, this effectively converted them from customary land users into legal tenants on private property. This fact alone laid the ground for the genesis of multiple rights on the same piece of land, which is a defining characteristic of land disputes and relations as evidenced by evictions and a land use impasse between landlords and tenants in contemporary Uganda. To the researcher it is surprising to note that even the so called landowners did not spend or do much to acquire these lands other than merely getting a privileged position over the tenants who once owned the land equitably and so they could not easily adapt to their current status without raising some queries.

The first sign of discontent in the relationship between *mailo* owners and tenants which brought about conflicts in the *mailo* system led to the enactment of the *Busuulu* and *Envujjo* law of 1928 which provided the tenant cultivators with security on land and set a limit on the fees which they were required to pay to the *mailo* owner. This law was instrumental in preventing the development of a landless peasant class. It was enacted as a result of complaints from tenants over the landlord's increase in the rate of *busuulu* and *envujjo* (rent) payable. Under this law, the rates were standardized and restricted and the peasants could not be forced off their *bibanja* without an order of Court. The new system with its change in ownership was particularly profound for those who held land as *bibanja* holdings. They remained as such on *mailo* but on top of being subjected to customary obligations, also had to conform to the *Busuulu* and *Envujjo* law of 1928 (ibid).

According to Mabogunje (1992) *mailo* land tenure system is considered to be an officially adoptive system. This type of tenure is found in the central (Buganda) region of the country and some parts of Bunyoro and Ankole Kingdoms. This tenure system has majority of the occupiers being tenants rather than landlords. *Mailo* land tenure can be said to be freehold but the legal significant difference between freehold and *mailo* tenure is that *mailo* is subject to customary and statutory rights of lawful or bonafide occupants of the land.
It can be said to be a hybrid system of the traditional customary and the modern freehold system. It is also one tenure system that permits the separation of ownership of land from the developments on the land made by a lawful and bonafide occupant of land (Land Act, 1998). In other words it has some characteristics of freehold and others of customary.

Likewise, of existing landlord-tenant relationship as enacted in the Land Act of 1998 attempts to revert back to the pre 1920s time, the law clearly states three grounds under which a lawful or bonafide occupant can only be evicted by his/her landlord; failure to pay ground rent, selling their interest on land without giving the landlord first option and abandonment of the *Kibanja* for over a period of 3 years (Land Act 1998).

The term *Busuulu* (ground rent to be paid by the tenants) has been widely readopted. However, key issues like setting limits to the size of land a tenant can claim and establishing a streamlined compensation legal regime to compensate tenants have not yet been implemented. These two issues usually frustrate land sharing negotiations between landlords and their tenants. Today we have people claiming *bibanjas* of over 20 acres.

On the other hand, the government has accused landlords of evicting tenants without adequate compensation. But what is adequate compensation, given that there are no limits to the size of *kibanja* a tenant can hold and streamlined compensation legal regime to guide the landlords and their tenants? Should compensation be based on the value of interest in *mailo* land? If so, won't this equate land occupancy to ownership? Should the value of a *kibanja* interest be a percentage of its *mailo* interest, if so what will it be? Will it be based on land sales comparables (similar and recently sold *kibanja* interests)? If so, which approach do you use when there are no reliable sales comparables?

As the concept of 'trusteeship' was not well developed in Buganda, clan *mailo* was registered in the names of the clan heads at the time, for example Kalibbala in case of the *nsenene* (grasshopper) clan. The clan land however became the personal estate of the head at the time of the allocation of the land to the clan. He was able to pass it to his descendants or sell it outright. His clansmen thus technically became the tenants of their clan head on what was meant to be clan land held on their behalf.

Official estates were registered in the title name of the estates, say, 'Ssekibobo', in the case of land belonging to the county (saza) Kaggwe. Kasozi A.B. K. tells us in his book "The Bitter Bread of Exile" that the titles of Buganda counties were derived from the names of the first occupants or holders of those offices, e.g. Kimbugwe for head of Bululi County.

The titles of the official estates land were made in those names. It was not unusual for the holder of the office to assume the title name of his office and allow his personal name to fade away. Some crafty chiefs, particularly those who succeeded the ones who had received *mailo* under the 1900 Agreement, exploited this to sub-divide and transfer part of the official estate to third parties. In some parts of Buganda, therefore, what remains of the official estate is the rump on which the official building stands. To the researcher this therefore implies that the selfish interest in seeking for personal gain did not start today but soon after the officials and clan leaders got hold of what could have been for the society. It is therefore not shocking to learn that to date, the land owners and the tenants are clashing for what they actually don't have sole ownership and they don't want to co-share it with their co-owners.

Critics, for instance, pointed out that privatisation of land left hundreds of thousands of peasants (*Bakopi*) landless and disenfranchised. While they had not owned the land previously, now they could be actively evicted from it by the landed class that received this windfall secured, soon after, by land titles confirming their ownership. It created a stalemate that continues today in Uganda and with subsequent laws, from Amin's decree in the 1970s to the current Land Act had tried to solve without success; one in which people own land they do not use with another set of people using that same land without owning it.

According to (Coldham, 2000) this shows severe restrictions of the powers of a *mailo* land owner. It also sends a signal that full ownership rights of a land owner are being interfered with which is contrary to the constitution about land ownership (Nsamba-Gayiiya, 1999). This problem between landlord and tenant is so intense that it has caused some amendments in the Land Act to ensure the two parties leave in harmony without having a sour relationship which have caused massive evictions of the tenants by the landlords. As proof of ownership, the owner of *mailo* land is issued a certificate of title while the occupant is given a Certificate of Occupancy (CO). These two documents instead of making the situation better ended up creating more challenges as the latter was not easily accepted as a legitimate document of proof of occupancy because the tenants were not sensitized at the onset of its introduction as they were already used to their *busuulu* tickets.

Muyomba Nicholas asserts that after 1975, *mailo* land tenure and the *Obusuulu* and *Envujjo* Laws were abolished. The move was through General Idi Amin Dada (the President of the Republic of Uganda) who introduced a Land Reform Decree in 1975 that converted all *mailo* land into public land, owned by the government under the management of the Uganda Land Commission. It declared all land to belong to the state, abolishing all other ownership rights including *mailo* tenure, and repealing previous legislation, including legislation that protected *kibanja* tenants. The decree officially existed until the passing of the 1995 Constitution, but it was never really put into effect by Amin's anarchic regime. It was largely ignored by local authorities, tenants and landowners alike.

Making sense of why all these interventions have failed, Daudi Mpanga Buganda Kingdom's Attorney General blames the blame game tendency.

"*They have always blamed the landlords and the laws that are made tend to create winners and losers, yet if you appreciate history and the facts as they are, you need an amicable solution that does not pit one side against the other*," he said.

Weighing in on the failed interventions, Bugweri Member of Parliament (MP) Abdu Katuntu, who is also shadow Attorney General, says the government has failed to implement the laws in good faith. "For instance, under the current land law, there are supposed to be land tribunals to

consider disputes but this is yet to be implemented as disputes end up being solved by RDCs and State House agents who do it in such a way that fits their political interests," Katuntu explains. Land tribunals existed but they became inactive with the emergence of the land board which was better facilitated and composed of more skillful staffs.

However, Daudi Migereko, the former Lands Minister, says what has always curtailed previous interventions is the lack of a land policy that takes into account the new changes in the economy. Migereko is confident that if the new land policy is implemented, a solution will be found.

"*We can only have this resolved if the policy is appreciated and have all the laws amended to reflect what the policy says*," he told The Observer.

In a bid to sort out Uganda's messy lands sub-sector, the government approved the National Land Policy 2011. The policy, among other things, provides a framework on how land will be managed and used in Uganda for the next 30 years. The policy proposes an amendment to the Land Act to restrict foreign nationals' interests in land, and seeks to regulate the booming real estate business. However, even with the existence of this policy since 2011, land crisis still persist as 2030 draws nearer every passing day.

2.2. The Rights of Mailo Land Owners

Brainshare, 2016 states that a *mailo* owner has considerable proprietary rights in the land which are limited only by the provisions of the *Land Law 1900*. In relation to the peasant holders the rights of the *mailo* owners were further defined by the *Busulu and Envujo Law, 1928*. The provisions of this Law were:

(i) Each tenant shall pay *busulu* per annum to the land owner;
(ii) and shall pay *envujo* according to a schedule (1) on economic crops and also 2s. per brew of beer;
(iii) and he shall render the owner all respect and obedience prescribed by the native custom and law;

(iv) and the owner shall have the right to occupy any part of the land for the purposes of residing and growing crops.

The Land Transfer Act, No. 33 of 1970 however barred non- Africans from acquiring any interest in land owned by an African without consent of the Minister. However long before this there were reservations with regard to particular holdings which were left to the sovereign. Of particular relevance on this aspect is the Crown Lands Ordinance of 1903.

But the current land law as enshrined in the Land Act 1998 and Amended in 2010 creates the following provisions;

Article 31 of the Land Act 1998 states that, a tenant by occupancy on registered land shall enjoy security of occupancy on the land.

The tenant by occupancy shall pay to the registered owner an annual nominal ground rent as shall be determined by the board.

If a tenant by occupancy fails to pay the approved ground rent for a period exceeding two years, the registered owner shall give a notice in the prescribed form to the tenant requiring him or her to show cause why the tenancy should not be terminated for nonpayment of rent and shall send a copy of the notice to the committee.

If the ground rent is not paid within one year from the date of service of notice or the tenant by occupancy has not taken any steps within six months after the date of service of the notice to challenge the notice by referring to the land tribunal, the registered owner may apply to the land tribunal for an order terminating the tenancy for nonpayment of the rent.

In view of the fact that the rights of the peasant holders in their holdings were so closely guarded by law and custom, it was found necessary to amend the original law to provide for the landowner to occupy some part of his land for the purpose of residing and growing crops. If the part he desires is held by a peasant he must apply to a court of law for an order of eviction against the particular peasant. But the court would not make an order of eviction unless it was "satisfied that there was not sufficient land and suitable area on the land for occupation by the

owner." Compensation was granted in such cases against the landowner and usually the peasant was allowed first to harvest his annual crops. This right does not, however, extend to such land as may be required by the landowner for extensive farming or some other economic purpose. Therefore difficulties have arisen with the introduction of mechanization. *Mailo* owners desirous of making use of their land find themselves without any compact piece of land on which mechanized agriculture can be carried out economically (Mukwaya A. B, 1953).

In Uganda land marketability was one of the key driving forces in the land reform process. Chapter 15 of the Constitution of 1995 on Land and Environment and the Land Act 1998 were developed with one of the major objectives being the enhancement of the land market where it did not exist. A number of principles were considered inter alia the need to support agricultural development through the function of land market which permits those who have rights in land to voluntarily sell their land and for progressive framers to gain access to land, the need to refrain from forcing people off the land, particularly those who had no other way to earn a reasonable living or to survive. Land tenure system needed to protect people's rights in land so that they are not forced off the land before there are jobs available in the non-agricultural sector of the economy to absorb them. Lastly it was considered that a good land tenure system should be uniform throughout the country (Matsiko Godwin, 23rd December 2012).

2.3 Who is a *Kibanja* Holder Before the Law?

The *Kibanja* was a new type of land holding created as a result of the enactment of the *Busuulu* and *Envujjo* Law of 1928. It has however evolved over two major land reforms; the Land Reform Decree of 1975 and the current land tenure reforms that were essentially introduced by the 1995 constitution and operationalised by the Land Act, 1998 with its subsequent amendments of 2001, 2004 and 2010.

The following persons are recognized as tenants or *Kibanja* holders before the law.

1. A person who settles or settled on land with the consent of the land lord.
2. A person who paid *busulu* and *envujjo* under the repealed *busuulu* and *envujjo* law.

3. A person who by the enactment of the 1995 constitution of the Republic of Uganda had settled on land for a minimum of 12 years and above without any objection from the land lord.
4. A successor in title of all persons listed above- Land Act 1998.

2.4 The Rights of Peasant Holders (Tenants)

According to Mwebaza Edward, the peasant cultivator in Buganda has certain recognised rights which are protected by law and custom. These rights are inalienable and un transferable and they are permanent and heritable. The current Land Act 2004 as amended 2010, provides for the protection of these rights as follows:

(i) no peasant holder shall be evicted save for public purposes or unless a court shall have tried the case and made an order of eviction;

(ii) the court may grant compensation for improvements;

(iii) a peasant holder shall have the right to cut trees and to get firewood, and the right of access to pasturage, and salt licks;

(iv) a peasant holder in succession to the holding shall remain in possession;

(i) no change of ownership of *mailo* land shall affect the status of a peasant in his holding.

For the avoidance of doubt, the security of tenure of a lawful or bona fide occupant shall not be prejudiced by reason of the fact that he or she does not possess a certificate of occupancy.

Muyomba Nicholas proposed that the dominant view is that land has to be viewed as a market commodity for landlords; therefore tenants should opt for a negotiated compromise, especially as regards ground rent to cater for a fee equivalent to the commercial value of the land, as this would guarantee tenants' rights in perpetuity. The government however opposes this arguing that majority of these tenants are peasants and cannot afford economic ground rent. To accommodate both views, Muyomba proposes that tenants in the urban areas should be charged economic rent while the peasants in the rural areas should pay nominal rent. To him this would ensure that prime land remains productive and the issue of landlessness among the peasants is mitigated.

Many times, squatters usually disguise themselves as bonafide/lawful occupants and as such become legally protected by law hence further fueling land conflicts between landlords and their

tenants. To mitigate this, landlords should know their tenants and the same are expected from the tenants. Landlords can start by regularising the occupancy of their tenants and keeping registers/ inventories.

Such registers can also be passed down to their successors/heirs/heiresses so that the old lawful/bonafide occupants are not evicted by their new landlords. Registers also prevent double payment and impersonation of occupants when the land is being acquired by real estate investors and developers.

The intricacy in the above has been that instead of exploring the above procedures, the tenants and the land owners had been embroiled in disagreement. For instance when court takes long to decide on a boiling matter, the aggrieved party would not wait for a verdict to be passed. Even when it is passed and not in his/her favour, the un satisfied party would resort to incivility.

2.5 Cessation of the Rights

The simplest way of maintaining the rights in a holding is by effectual occupation. This normally consists of either building a house on the holding, or growing crops on it, or residing on it by the holder or by a recognised dependant.

On the other hand the rights in a holding lapse by non-occupation or neglect for more than a reasonable time. The Limitation Act and Land Act limits the reasonable time to 3 years but it is generally longer. In several instances the courts decided that the rights of the holders had lapsed through non-occupation. For example, in *Kirabira* vs *Musisi.* W Kirabira after living on a holding for 24 years had left it vacant for 2 years, and it was held that he had forfeited his rights by neglect.

Where a tenant expressly surrenders a holding to the landowner it is rare that any conflict arises except where the peasant changes his mind or his successor re-claims the holding. Where land is relatively scarce it is becoming common for landowners to demand written evidence of the surrender from the tenants. In *Lubega* vs *Kayongo,* Kayongo succeeded his father, who died in 1945, after the father had surrendered the holding in writing to the landowner a year before he died. When Kayongo claimed it, it was held that he could not inherit it as it had reverted to the landowner (Mukwaya A. B, 1953).

2.6. The Challenges of Dual Mailo Land Ownership on the Co-existence Between Landlords and Tenants

The beneficiaries of *mailo* land allocations who also happened to be serving chiefs could not spare the time to superintend their land holdings scattered in different parts of Buganda. This situation compelled them to appoint agents (*basigire*) to collect rent from the tenants (*basenze),* approve the sub-division and to allocate new *bibanja* on the *mailo*. The sub-division of *bibanja* was encouraged as it meant an increase in the number of people bound to pay rent for the gain of the *mailo* owner. The agents in the quest of getting more rent brought more tenants some of whom were not known to the landowner. More so the land owner could not receive the nominal rent fees and so decided to get rid of the illegal tenants who were otherwise paying rent to the agent. Possible attempt by the tenants to exert their claims to the landowners by presenting their proof of claim was another cause of conflict as some of those agents were terminated by the land owners hence sparking conflicts of claim of bonafide/legal ownership by tenants and sole ownership of land by the landlords.

Dr. Nuwagaba Augustus, a senior lecturer in the Faculty of Social Sciences, Makerere University and land policy development consultant says the current land tenure constrains the land market; especially *mailo* land, which he says, has created a "land impasse." (Gerald Rulekere: April 24, 2006).

"*The problem with mailo land is that it creates legal ownership of land which the owner does not occupy and occupation of land which the occupant does not own. This has led to constrained land transactions*," Nuwagaba says.

The land is settled on by bonafide or illegal tenants and they have to be compensated and resettled before a *mailo* landowner can sell and/or develop the land in question (Muyomba N. 2015). However the researcher noted that there are instances where both the landowner and the tenants live side by side in the same land and using it. In so doing, the tenant is restricted to the portion under cultivation as the landowner privileged to control even parts reserved for other activities.

The repeal of the *Busuulu* and *Envujo* laws in 1975 created a gap in the sense that the later laws did not specify the types of *bibanja*. It equally failed to specify the size of *kibanja* the tenant would be entitled to. Since *kibanja* had no clear defined measurement, the tenants kept on extending their portions and eventually consumed the entire land leaving the owner without any free space. Possible negotiation between the landlord and the tenants have most times ended into stern disagreement because each side would exert personal interest with intent of winning more space and not seeking for a solution to the problem. Other than asserting that the tenant is entitled to his/her portion of *kibanja* and that the tenant could negotiate with the land owner for harmonious settlement, the *Busuulu* and *Envujo* laws did not make matters easier between the tenants and the land owners.

According to Edward Kaggwa, chairperson of the Wakiso Bibanja Association, a loose grouping of land tenants in the district, the relationship between *mailo* land owners and occupants or tenants has been strained further by the rising demand and value of land in recent years.

"*Ever since land became a hot cake, we keep on receiving complaints of land disputes as tenants are kicked off the land by their landlords*," he said.

Kaggwa likens a tenant in Buganda to a drunken person's chicken – it survives one night at a time until the owner calls for the knife.

"You only survive at the pleasure of the landlord, something that is unfair," he observes (Sulaiman Kakaire 2013).

According to Emilian Kayima, the then spokesman of the Land Protection Unit of the Uganda Police, the problem of dual ownership especially *mailo* land is a challenge which has arisen as a result of the law giving rights of ownership and usage to more than one person for the same plot of land. In the interest of protecting the tenants, the law states that a landlord cannot sell off any piece of land without the consent of the tenants. This is the cause of most of the wrangles among people who buy land under *mailo* tenure and tenants they find on the land.

Kayima says that what some *mailo* landlords do is sell off land without the consent of the tenants and in the end the new buyer gets in trouble with the tenants who were not informed of the sale by their landlord, yet the law protects them that if they were not informed then they have to be compensated before eviction. Therefore anyone buying land under *mailo* tenure where the land has tenants, has to first ensure that the existing landlord and his tenants have reached a

memorandum of understanding, or else the buyer will end up in conflict (Daily Monitor Wednesday December 23, 2015).

Collins Hinamurdi 25 Dec 2015, view that Buganda *busuulu* and *Envujjo* law of 1928 which according to Kaweesa Keefa a land lawyer based in Mukono and Kayunga was perhaps the first legislative enactment in Africa dealing with native rental condition came into effect on January 1 1928. Some of the provision that proved contentious include section 11 of the Buganda *Busuulu* and *Envujjo* Act 1928 which provided that

"*No tenant may be evicted by the mailo land owner from his land save for public purpose or for other good and sufficient cause unless a court having jurisdiction shall have tried the case and made the order of eviction*".

These according to Keefa Kaweesa were the origin of Land rights of the landless peasants that were created by the colonial agreements. Those *mailo* owners who have tried to follow the legal path by resorting to courts of law to have the illegal tenants evicted have found no profit in doing so. The State has intervened by stopping the evictions of *bibanja* holders, with or without court orders. It has set up a plethora of land committees, sometimes to reconcile landlords with tenants and sometimes to investigate and report on explosive incidents. The situation has not abated.

Then there was the 1995 Constitution and the 1998 Land Law part of which empowered tenants and have created the current strains in the Uganda's land system and opened the door for populist politicians like the former State Minister for Lands Aidah Nantaba's action in 2012 during which she advocated for the rights of the tenants and halted court decisions relating to the evictions of tenants from their *bibanja* before all other remedies like arbitration, appeals and negotiations are resorted to. She also ordered for the return of those already evicted from their settlement hence escalating the conflict.

The land reform provided for the creation of land tribunals at village level, they also provided for district land boards to be used in the decentralization of land Administration in the country. Following the review of the Land Act 1998 and subsequent drafting of the Land Sector Strategic Plan (LSSP), the Land Act was amended to move the Land Committees from the parish level to the Sub county level. Following the difficulties in implementing the Land Act, several amendments to Act resulted in minor changes in the land administration structures at the local level. The Land (Amendment) Act, 2001 was enacted to mainly enable Magistrates' Courts and

Local Council Courts to continue handling land disputes pending the establishment of the dispute resolution mechanisms. Subsequently, the Land (Amendment) Act, 2004 was enacted purposely to streamline administrative structures of the land administration systems. Among others, it provided that the Local Council II Courts are the courts of first instance to replace the Sub county Land Tribunals, while Area Land Committees replaced the Parish/Ward Land Committees (Bruce Rukundo and Daniel Kirumira. 2014).

From the outset, the 1998 Land Act annulled the roles of existing lower-level courts and of local council officials in hearing land disputes with immediate effect and introduced land tribunals. The Act did not make the necessary provisions for activation of the new tribunals and there was no plan for raising funds, or for the implementation (Rugadya 1999: 10). Policies have changed repeatedly. The absence of the prescribed land tribunals led to a growing backlog of cases and access to the justice system is difficult for most people who have land related cases hence escalating the crisis.

Other challenges include lack of coordination between technocrats and politicians, and between policy makers and the primary land-users at the local level. Besides, most of the land and land laws are either outdated or do not address the current situation and therefore require urgent reviews and revision to make them consistent with other laws and above all the 1995 Constitution. Therefore, the necessity for building synergies between and within institutions responsible for land management is clearly as good as entrenching the desired harmony between land related laws to ensure a sustainable land management system. Building synergies however requires that all land related institutions have the requisite financial and logistical capacities and adequate staffing to effectively execute their respective mandate. The decentralized land management framework tampered with the difficulty of the Local Governments to recruit and retain technical officers, coupled with limited access to adequate resources for policy implementation continues to undermine coordination between the districts and the central government (Daniel Kirumira).

Oosterveer & Van Vliet, (2010) concur that complex relationships and tensions abound among; a) the technocrats and political elites, b) between different levels of government (district level & national level) and, between environment and natural resource management and other policy domains such as agriculture, education, economic development, and others (ibid). The researcher

looks at the internal conflict between the institutions which could have joined hands to offer solution to the land disputes as responsible for the escalation of this crisis. Politics should be separated from technicality but since all are geared at human good, the different factions should join hand in fighting for the common good of the people.

In addition to these problems, the majority of Ugandans are ignorant about the laws and land reforms. People have continued to occupy land they do not own without the consent of the landlords and later are evicted by the owners. This has led to many conflicts over land in Uganda today. There is ignorance of the law and land tenure on both sides: the landlord is ignorant of his or her rights and likewise the tenants do not understand their rights over land.

However, the landlords have not had a monopoly of the villainy. Seeking to exploit the present chaos, many fraudulent people lay claim on unoccupied land they never held before by presenting all manner of evidence of previous occupancy, some of which bordering on the macabre. Others expand their holdings well beyond what had been agreed on. These are the current chaos as a land bonanza.

Nuwagaba says this has resulted in tenants who need a lot of compensation from potential land developers, yet they occupy most of the land. He says separating the rights of tenants and *mailo* landowners, is a situation, which apart from precipitating corruption, also breeds favoritism in enforcing to favor tenants or landlords. Even the law is vague on the matter of land rights between tenants and *mailo* holders, making property acquisition, ownership and development difficult.

In many instances the land owner is left holding nothing but the paper title. Defenseless landlords have been prevented from accessing their land by tenants wielding machetes and sticks. A simple exercise like a landlord taking a surveyor to open up the boundaries of his land can lead to loss of his life and that of the surveyor at the hands of the tenants who, viewing such act as a prelude to their being evicted, label him a land thief – of his/her own land. Nowhere is this more pronounced than in Buganda and the problem appears to emanate from the land tenure system; especially the *mailo* land system.

Where a peasant holder has made considerable improvements and has planted permanent economic crops such as bananas or coffee trees he usually attempts to get some return for these improvements if he intends to leave the holding. He may try to transfer it to another peasant for ease of retaining tenancy. Or, alternatively, he may try to preserve his rights in the holding by putting some development so as to prevent it reverting to the landowner on the claim that it was abandoned. To preserve his rights he may leave a relative or some other dependant on the holding after he has moved to another holding. The landowners have in most cases come out to disown these people and tried to force them away on the assertion that they were encroachers even when signs of occupancy and proof of ownership is clearly evident.

Whereas the tenants' security was guaranteed by law, as long as they fulfill the terms and conditions of the tenancy, including paying fees, market forces of demand and supply have tilted the scales.

"*As the land continues to sell at a premium, the market is now in the hands of speculators who are buying land from landowners who are desperate having failed to develop the land,"*

Daudi Mpanga, Buganda Kingdom's Attorney General, explained.

The *kibanja* land holding as a form of customary tenancy will continue to evolve over the years. The challenge is in ensuring this transformation favors the harmonious co-existence between the landlord and his/her tenant. Though the increase in the number of disputes has put pressure on the existing land tenure systems and subsequently on the dispute settlement institutions, government interventions that had aimed to reduce land conflicts did not seem to have been effective (Rugadya 2009: 2). Generally, the implementation of the new land court system, prescribed by the Land Act, has been extremely slow, thus causing a "deficit in dispute resolution" (Rugadya 2009: 21).

Land is not increasing in size and yet the population depending on it for livelihood is increasing. Most people also have a mind-set that land is the only form of wealth and will do anything to acquire a piece or retain one. Consequently, throughout Buganda issues over *mailo* land have given rise to unprecedented and increasing suspicion, fear, tears, bloodshed and bitterness.

2.7 Probable Remedies to the Challenges of Dual *Mailo* Land Ownership in Uganda.

The researcher identified some of the following as scholarly remedies to the challenges facing the dual *mailo* land ownership in Uganda and these include the following;

Due to an outcry by the tenants, the government should revert to the *Busuulu* and *Envujo* Law of 1928. According to this law, rent consisted of two types: *busuulu* (equivalent to ground rent) and *envujjo* (rent out of agricultural produce). The law then secured the occupancy of a *kibanja* holder. It consists of three types namely; a domestic, economic and contractual *kibanja*. An occupant of a domestic *kibanja* acquires an interest in the land and cannot be evicted. On his death, the *kibanja* can be inherited by his widow or heir. It cannot exceed one acre but beyond this acre the occupant can cultivate economic crops on up to three acres of the *mailo* owner's land without his permission. The interest of the occupant in an economic *kibanja* is limited to the crops he grows on it. The contractual *kibanja* is based on the terms agreed upon by the owner and the tenant (Okuku 2006). This is comparable to the current hire of *kibanja* for cultivation for a stated duration of time.

Bossa Joseph, (2013) asserts that it would improve matters a bit if land registrars desisted from issuing multiple titles which creates conflicts between the bearers of those titles and between the tenants and the landowners as they sought to transact with the right landlord.

Damaris, 2013 proposes that where no written agreements exist between the land owner and his/her tenants regarding the size of *kibanja* holding, the government should come up with an appropriate limit to the size of land a tenant can claim. For example, a *kibanja* in a urban area could constitute of; residential buildings (*enyumba*), compound(*olujja*) and an access road to the property (*ekubo*) while that in rural area, could include all the above and a farm to practice subsistence farming (*enimiro*). Furthermore, a minimum size of a *kibanja* holding should also be determined say 12 decimals of land in an urban area and 24 decimals for a rural area. This according to Damaris would ensure that lawful/bonafide occupants are not exploited and that occupants in rural areas remain with enough land to feed themselves through subsistence farming. The maximum limit of one acre of domestic *kibanja* as set by the 1928 *Busuulu and*

Envujjo law should also be revisited and modified to meet the ever changing demand for land. Limits set can vary from one area to another depending on the pressure on land.

Despite numerous government interventions to stop them, evictions from land continue apace all over the country. Armed with guns, some land owners, usually new ones, chase occupants off land, rendering some of them homeless. Land eviction should therefore be done only with the orders from court after exploring all options of peacefully settling the conflict. Eviction should therefore come as a last resort (Ssemutooke Joseph, 2015).

As Uganda's economy continues its rapid growth, land and natural resource conflicts will continue to emerge. The decentralized structure for land administration has only been in place a decade or so; support and training for its effective functioning in managing conflicts between customary tenure rules and those associated with freehold and *mailo* (a customary form of freehold land) tenure are essential. Strengthening of local courts' capabilities to adjudicate disputes may also be important (Sulaiman Kakaire 2013).

According to Muyomba N. 2015, there is need to revisit the land reform issue. In addition to re-orderings, it is necessary to institute a specialized land tenure system. This revolutionary intervention should seriously consider that the relatively orderly development has been carried out on public land rather than *mailo*." But, any by-laws or regulations made in the above regard should be flexible, understandable, problem focused, applicable; and consider land banking costs and sensitization.

The legal dualism on land is evident even in standard laws. For example the Land Act 1998 provides for lawful, bonafide and illegal occupants on land. Lawful tenants are recognized by the law. The bonafide are recognized by the law because they have lived on such land for more than 12 years. But they have to apply for a "Registrable interest". Illegal occupants are mere squatters who settle on someone's land without permission but can be compensated for any development which they have put in the land before eviction (The Uganda National Land Policy, 2011).

The different types of land tenures should be consolidated into freehold and leasehold tenures to avoid the confusion in our land laws. *Mailo* land tenure is also owned in perpetuity like freehold

tenure and so these two should be consolidated into Freehold tenure. Some forms of customary tenure like the "*Kibanja*" also referred to as bonafide occupants are the same as "leasehold tenure" and so these two should also be consolidated into "leasehold tenure". This will encourage development and in some instances government takeover of the land for development subject to payment of compensation to the affected individuals in accordance with the Constitution (Maria Nassali, 2015).

If compensation is done in accordance with section 35 of the Land Act (on willing buyer willing selling basis) and the landlord exploits the tenant's ignorance/poverty, does this amount to inadequate compensation? Similar misfortunes happen in any transaction. Societies revolve around agreed-upon rules and their enforcement, including the law of contract. When two parties that are empowered agree to a transaction out of their free will, the understanding is that both parties will discharge their responsibilities. What the government needs to do is to ensure that mediators are available for negotiations between peasant *bibanja* holders and their landlords. The government should also ensure that these mediators act effectively and equitably (Muyomba N. 2015). All this has led to a situation where people on land fail to develop it (build permanent structures) because of fearing eviction. Even the legal owners (*mailo*) can't develop or easily sell the land to developers because they are required to compensate the occupants. This situation has also fueled corruption as legal land buying or allocation and approval is more complicated because of the current land laws.

Computerization of land register. This option is more responsive to the needs and demands of the citizens and business clients. Computerization prevents, reduces or eliminates backdoor transactions, forgeries and graft. There is more efficient and speedy registration of transactions. The problems of missing land records can be eliminated. There can be a decrease in the cost and space required for storing land records. There is simplification of the preparation of disaster copies. There is a faster resolution of land disputes. There is easier identification and prevention of fraud and illegal transaction. The system facilitates search and verification of title in the shortest possible time (The Uganda National Land Policy, 2011).

Development of independent institutions both inside and outside of the government that is capable of reconciling conflicting goals and providing for sustainable management of Uganda's

natural resources will be needed in the coming years. There is a need to strengthen the capacity of Uganda's public institutions to manage and resolve conflict over land and natural resources and, at the same time, to enhance the capacities of Uganda's private citizens to understand, assert and defend their rights (ibid).

Matsiko Godwin, (2012) proposed that the only way to end land conflicts in Uganda is by educating Ugandans on their land rights as clearly as possible. Landlords must learn that their rights on land are not independent of the rights of their tenants and therefore landlords must recognize their obligation to compensate tenants when seeking to change the rights of the tenants on land owned by landlords. Tenants do have rights, but they also have responsibilities: they have the obligation of paying ground rent to their landlords if they are to be considered legal tenants on the land. A tenant who fails to do so may be evicted. One way to reduce the tension would be for tenants to purchase titles from their landlords to avoid future conflicts. Interventions by organizations like Human Rights Awareness and Promotion Forum (HRAPF) can help find solutions for problems arising from current state of land ownership in Uganda

The change in dispute settlement provided for by the Land Act was a reaction to increase in the number of land conflicts experienced in many areas of Uganda, which had overburdened the normal court system (Mugambwa 2002: 42). The Land Act changed the system for land dispute settlement, replacing the courts below the High Court with new land dispute settlement institutions: the land tribunals. At the lowest level, the *Sub-county Land Tribunal* (local council level three out of a total of five administrative levels in Uganda) and each gazetted area in towns were to provide the first step in hearing disputes related to land, which were the subject of an application for a land certificate (Government of Uganda 1998).

A more balanced position to accommodate the interests of both the landlords and the occupants must be reached. There must be options to allow room for amicable negotiations between the landlord and tenant for a win-win situation for example land sharing or land purchase at an agreed price. In land sharing agreements, tenants should agree to let go a percentage of their acreage in lieu of registerable rights in title. 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 (Tumusiime Abdulaziizi K., 2014).

As Uganda continues to grapple with land problems associated with the *mailo* system, Kintu Nyago and Katenda Luutu, a former RDC, want the government to compensate *mailo* owners, as this will guarantee security of tenure for all tenants.

"When you consider the law, the landlords have rights and at the same time even the tenants and bonafide occupants also claim that the land was originally theirs; so, they cannot be chased away. So, in light of this, government should find funds to compensate the landlords," Kintu Nyago argued.

He says the money can be sourced from the former colonial rulers, who are responsible for the mess (Kakaire Sulaiman, 2013).

However, Isaac Bakayana, a law lecturer at Makerere University is of the view that compensation would not work because it is not clear whether mailo owners are willing to sell off their interest.

"We are in a free market economy where you have willing buyer and seller. So, in this case I don't know whether a landlord like Mengo is willing to sell its land," says Bakayana, whose counter-proposal is that if the changes in the economy have complicated the landlord-tenant relationship, government's efforts should be geared towards facilitating the tenants to fit in the changing market dynamics (ibid).

However, Daudi Mpanga Buganda Kingdom's Attorney General disagrees with this observation, expressing confidence that Uganda can move out of this stalemate if the legal framework takes into account the cultural needs of the different stakeholders, economic factors as well as the interests of all parties in the *mailo* land tenure system.

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. This can be done by identifying the highly tenanted land at the sub-county level and purchasing it first. It's easier to negotiate with these

landlords since such land is almost of no value to them. The operationalising of the Land Fund should therefore be highly prioritized. The longer it takes to implement it, the more expensive it will become since the value of land keeps appreciating (The Uganda National Land Policy, 2011).

Since the Uganda Land Commission is perpetually short of money to meet their statutory obligation of compensating absentee landlords to turn over land to the landless through opertionalising the Land Fund, tenants on registered land should therefore be facilitated with access to the Land Fund to purchase their registerable interest. The very poor lawful/bonafide occupants should be identified at the sub-county level and given first priority to access these funds. By so doing, those who stand a high chance of being left landless are catered for (Hinamindi, C 2015).

Finally, the Land Act also, for the first time in the history of modern Uganda, recognised the role of traditional authorities and mediators in dispute settlement by allowing the land tribunals to pass on cases to such authorities (Mugambwa 2002: 46; and Busingye 2002: 6).

Improved tenant security simply exacerbates dual claims to land in Buganda where title owners are unable to sell their occupied land and tenants find it difficult to develop the land they occupy because they do not own the title to it and therefore may be evicted. Furthermore, land grabbing still exists, as evident from the fact that evictions form daily news headlines today, despite the presence of land reforms (Edward Mwebaza). Therefore, the traditional authorities and mediators should be enhanced to mitigate then settle matters between the landlords and the tenants for ease of creating harmony and effecting undisturbed development in the land.

From the aforementioned information, dual ownership was apparently introduced into central region without the involvement of the majority of the landowners other than the king who was then considered to be the owner of the whole land in the region. This agreement between the king and the colonial masters turned the landholders into tenants with limited powers to utilize their land. As time passed by then initial beneficiaries of the land started disposing it off to potential buyers and subsequent beneficiaries. There emerged disputes between these landowners and the tenants over who holds superior powers over the others leading to the formation of the *Bataka* Association. Much as possible attempts such as the formulation of the *Busuulu* and

Envunjo laws were put in place, but the succeeding governments repealed the laws, passed decrees and the conflicts persisted and escalated up-to-date hence provoking this study.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0 Introduction

In this chapter, the researcher presented the research design, sampling procedure, research tools and the methods of data collection and source of data. It therefore provided a background against which the findings of the research were assessed regarding their validity and viability.

3.1 Research Design

The researcher used qualitative design from a sample of stake holders that is police Land Protection Officers, District Staff Surveyors (DSS), Registrars of Titles, Commissioner of Land Registration, Chief Magistrate, Resident Principal State Attorney (RPSA), Mediator, Local Council Leaders and selected private land holders. The researcher specifically used a case study especially single case study with the area of focus being central region of Uganda where in-depth study was explored in the challenges of dual *mailo* land ownership over an extended period of 2011 to 2015. The qualitative design focused on events that could not be quantified for instance perceptions and personal opinions (Walliman N 2011).

3.3 Study Area

The study area was the district of Luwero and the results derived there from were taken to represent the entire central region where dual *mailo* ownership is practiced.

Luweero District is located in central Uganda. It is bordered by Nakasongola District to the north, Kayunga District to the east, Mukono District to the south-east, Wakiso District to the south, and Nakaseke District to the west. The district headquarters at Luwero is approximately 75 kilometres (47 miles), by road, north of Kampala, Uganda's capital and largest city. The coordinates of the district are 00 50N, 32 30E (Latitude: 0.8333; Longitude: 32.500).

Luwero district is composed of three counties which are Bamunanika, Katikamu north and Katikamu south. The district has a total of 3 town councils which are Luwero, Wobulenzi and Bombo, and 11 sub counties.

The land tenure system in Luwero district is dominantly *mailo* tenure with other tenure practices such as freehold, leasehold and public land being practiced to a lesser extent. These *mailo* lands are composed of tenants in some areas and in other areas no tenants. Where there are tenants, the land owners are in constant conflicts with the tenants due to disagreement over how to co-exist in the land, how to share the land, how to compensate the tenants so that they can leave and how to buy off *kibanja* into land so that tenant can become independent land owner. The tenants are also mandated to pay land user rent (*busuulu*) to the landlords. They are equally mandated to harmonize their tenancy with the landowners so as to live as tenants in common or joint tenants or individual owners. But for *busuulu*, it is evidently least paid besides its minimal amount makes the land owners to derive minimal gains from it and hence not in support of *busuulu* payment.

3.4 Study Population

This is the parameter of interest. In determining the sample design, one must consider the question of the specific population parameters which are of interest. In this study the target people that the researcher interfaced with in the course of data collection were stakeholders in land departments who were Registrar say in a land conflict of Titles whose mandate is to effect registration of land titles, District Surveyors who are responsible for surveying the land and ascertaining its physical location and size, Resident Principal State Attorney who is the government legal expert with powers to peruse investigative files and ascertain whether there is a genuine criminal case to pursue or not, Land Protection Police officers whose tasks are to investigate land related cases then forward the file to the Resident Principal State Attorney for perusal or offers appropriate redress, Chief Magistrate who is the head of all land related cases in the magisterial area, district chairman who is the political head of the district and normally called upon to intervene in land related matters is the district, sub county chairpersons/mayors who are sought after to offer redress to land matters in their respective areas, chairpersons area land committee who are nearest to the community and people and are mandated to constitute court to

offer remedies to land matters at the sub county levels, a land arbitrator whose role is to mitigate land disputes with the aim of ensuring a peaceful settlement to the disputes as well as the landlords and tenants in the study area who are either the victim or victor of land dispute. A total of 65 respondents from the study population were selected to participate in the study (Bloor M and Wood F, 2006).

3.4.1. Sampling Procedures

To get information about a large group of individual people or things, it is normally impossible to get all of them to answer your questions or to examine all the things – it would take much too long and be far too expensive. The solution is to just ask or examine some of them and the data you get are representative (or typical) of all the rest. If the data you collect really are the same as you would get from the rest, then you can draw conclusions from those answers which you can relate to the whole group. This process of selecting just a small group of cases from a large group is called sampling. The selected respondents constitute what is technically called a 'sample' and the selection process is called 'sampling technique.' The survey so conducted is known as 'sample survey'. This can be probability (random) or non probability (non random) sampling procedures or both (Walliman N, 2011).

The researcher opted to use random sampling and non random sampling procedures. A total of 65 respondents were taken from different groups within the sample area using purposive and cluster sampling technique during which the sample population which included police officers from Land Protection Police Unit, district land officers who are responsible for land survey and registration, land arbitrator and the Resident Principal State Attorney were interviewed. The district chairperson, the chairpersons sub county and the chairpersons area land committees, as well as community members answered the questionnaires. Accidental sampling technique was also applied to a lesser extent so as to probe and corroborate other informations earlier obtained from other respondents. This also helped in monitoring the accuracy of the data collected.

The sample group were selected according to their areas of expertise especially technocrats in land department. The general population were persons who were holding land or *kibanja* and were identified and picked clustery but at times accidentally from the selected town councils and Sub Counties in the district through personal contact by the researcher or the research assistant

based on inquiry whether the person is either a tenant or a landlord and was willing to participate in the study. This sampling procedure enabled the researcher to collect sufficient information from the respondents and resourceful people who could volunteer information to enrich the study.

3.4.1. Sample Size

Somekh, B. and Lewin, C. (2005) refer sample size to the number of items to be selected to constitute a sample. The size of sample should neither be excessively large, nor too small. It should be optimum. An optimum sample is one which fulfills the requirements of efficiency, representativeness, reliability and flexibility. The researcher decided to purposively sample 1 Magistrate who is the Chief Magistrate Luwero Magisterial Area who sits to adjudicate on land matters in the district, 1 district chairman who intervenes in the land cases at the district, 1 Resident Principal State Attorney who is the chief prosecutor at the district, The researcher also sampled, 1 Registrar of Titles who processes and effects registration of certificates of titles, 2 District Surveyors whose tasks are to survey and determine the size and location of the land before registration, 4 Police officers from Land Protection Police Units whose cardinal roles were to investigate and offer redress to complaints related to land matters. 1 Arbitrator was also sampled in the study being a person who litigates in land disputes before other legal measures are resorted to, 7 sub county chairpersons who intervene in land matters at the sub county levels, 2 mayors who intervene in land matters at the town councils and 9 Area Land Committees officials who are responsible for handling land matters at the sub counties. The researcher also sampled 35 members of the public who are either the landowners or the tenants using cluster sampling technique. The researcher decided to sample 11 land owners 7 of whom were men and 4 women and 25 tenants of whom 14 were men and 11 women. These tenants were the majority settlers in the land and were raising allegations of being mistreated by the landlords. At least 4 respondents were sampled from each Sub County and town councils.

Since the sampled members of the public participated in the study through answering questionnaires, the researcher only targeted respondents who could read and conceptualize English language for ease of getting relevant and representative information to be used in the computation of data collected. A grand total of 65 respondents were sampled during the study.

This has been graphically presented as below;

Table 1: Sample Size of Respondents in Central Region

S/No	RESPONDENT(S)	NUMBER(S)
01	CHIEF MAGISTRATE LUWERO	01
02	REGISTRAR OF TITLES LUWERO	01
03	DISTRICT STAFF SURVEYORS	02
04	ARBITRATOR	01
05	LAND PROTECTION POLICE OFFICERS	04
06	RESIDENT PRINCIPAL STATE ATTORNEY	01
07	DISTRICT CHAIRMAN	01
08	SUB COUNTY CHAIRPERSONS	07
09	MAYORS	02
09	AREA LAND COMMITTEES OFFICIALS	09
10	LANDLORDS	11
11	TENANTS	25
TOTAL		**65**

Source: Primary Data 2016

3.4.2. Sample Technique

To Miller R. and Brewer J. 2003, a sample design is a definite plan for obtaining a sample from a given population. It refers to the technique or the procedure the researcher would adopt in selecting items for the sample. The researcher chose to use both random and non random sampling techniques. In random sampling technique, the researcher chose to apply cluster sampling technique where by the district of study was subdivided into sub counties and respondents were picked from each sub county for ease of getting representation from each sub county within the district. This was designed for the tenants and the landowners who could read and conceptualize the contents. Under non random sampling technique the researcher applied Purposive/Judgmental sampling technique. This was intended to identify people with in-depth knowledge in land/*kibanja* issues for ease of getting technical information that could enrich the

study and avail representative information to be used in data analysis and presentation. But because not all the respondents could be easily accessed within the specified time frame, the researcher also decided to apply accidental/convenience sampling procedure in the event that he meets a technical person or a respondent who could give information relevant to his study. This accidental sampling procedure was confined to respondents who answered questionnaires and this enabled the researcher to access and get information from whoever was willing to answer the questionnaires without going through the hurdles of persuading the non interested persons to answer the questionnaires. This helped in saving time and avoiding the non response from the unwilling respondents while focusing at the research topic and the specific objectives.

3.5 Field Access

The researcher decided to actively participate in reaching out to the respondents by meeting the persons to be interviewed in person. But in instances where respondents were to field in questionnaires, the researcher used the research assistants and where there was need to access cumbersome respondents and very important persons, the researchers had to use gatekeepers for ease of gaining accessibility and confidence building.

3.6.0 Data Collection Tools and Instruments

An *instrument* is a mechanism for measuring phenomena, which is used to gather and record information for assessment, decision making, and ultimately understanding (Colton D and Covert R.W, 2007). The researcher used the following data collection tools;

3.6.1 Interview

This is the elicitation of research data through the questioning of respondents. While quantitative (or 'structured'), interviews have a semi-formal character and are conducted in surveys using a standardized interview schedule, by contrast qualitative (or 'semi-structured', or 'depth', or 'ethnographic') interviews have a more informal, conversational character, being shaped partly

by the interviewer's pre-existing topic guide and partly by concerns that are emergent in the interview (Bloor M, and Wood F 2006).

They are conversations with a purpose to collect information about a certain topic or research question. These `conversations' do not just happen by chance; rather they are deliberately set up and follow certain rules and procedures. The interviewer initiates contact and the interviewee consents. Both parties know the general areas the interview will cover. The interviewer establishes the right to ask questions and the interviewee agrees to answer these questions. The interviewee also should be aware that the conversation will be recorded in some way and is therefore `on record'.

In using interview, the researcher decided to design interview guide for ease of keeping track of the information desired for the study and to obtain in-depth information from the interviewees who were carefully selected to offer technical information in their area of expertise. This guide was administered to the target group specifically the Chief Magistrate who is head of all cases in the Magistrate court in Luwero magisterial area, the District Staff Surveyors who are in charge of Surveys and Mapping, Resident Principal State Attorney (RPSA), Police Officers attached to Land Protection Department, the Arbitrator and Registrar of Titles who are responsible for land registration, the district chairman who mitigates in land matters in the district, the sub county chairpersons who preside on land matters in their sub counties and the area land committees who are the custodians of land in their respective sub counties. Interview guide enabled the researcher to get on-spot information and corroborated it with the secondary data obtained. It also allowed the researcher to probe into other aspects of land issues which could not be captured in the interview guide and yet relevant to the study.

3.6.2 Use of Questionnaires

Miller R. L and Brewer D. J 2003 asserts that questionnaire is the data collection technique most commonly used by social surveys. It is traditionally in the form of a printed document and is essentially a list of questions. The defining features of the questionnaire are that the design itself is highly structured and that the same instrument is administered to all the participants in the survey. When respondents fill in the instrument on their own without the help of an interviewer, the research instrument is called a questionnaire. Due to the standardised form of questioning,

bias due to the effect of the researcher is minimised. Because it collects information from respondents about the same characteristics and in a form that can be coded systematically, it is an ideal way of producing data that is suitable for quantitative data analysis.

Questionnaires can be open ended or closed ended. In this study, the researcher decided to employ both closed ended and open ended so as to collect detailed data from the respondents. This was also intended to target the respondents with busy work schedule who were able to fill the questionnaires at their convenience within the study time frame. It was also geared at administering uniform sets of questions to different respondents with the aim of collecting various responses which could guide in data analysis and interpretation later.

This data collection tool was administered to the selected land owners and tenants who could read and comprehend English language. This was on a prior personal contact with the respondent to ascertain whether the selected respondent was either a landlord or a tenant. The aim of selecting only respondents who could read and write was to enable the researcher and the research assistants who were not conversant with the local language and the local concept of land/*kibanja* terms to get representative information which could portray the view of the literate and the illiterate as well. The researcher learnt that since land and *kibanja* matters affect both the literate and the illiterate alike, more so the said representative groups were evenly distributed within the study area, they could not conceal information on matters which affect all of them-literate or illiterate. The researcher therefore found it prudent to sample only the literate respondents for ease of obtaining balanced information which is understandable by both the researcher and the respondents.

The questionnaires were hand delivered to the respective respondents by the researcher and or with the help of the research assistants. The collection of the questionnaires was by the researcher or his assistants.

3.7 Data Source

The researcher used both primary and secondary data sources. The secondary data source was used to establish information on the incidences of *mailo* land disputes in Luwero district and remedies offered thereafter. This was obtained from the Police Annual Crime Reports Form (PF I). The primary data was obtained by conducting interviews, use of self administered

questionnaires. This helped in getting data on the origin of *mailo* land ownership, the conflict between the landlords and their tenants as well as the remedies to such challenges and the information obtained compiled in readiness for interpretation and analysis.

3.8 Data Quality Control Management

The researcher used friendly interview sessions and the respondents were informed that this research was specifically for academic purposes and not for investigative or legal proceeding. This removed the fear from the respondents and hence getting correct and accurate information. This was also intended to avoid raising the respondents' expectations that the study might be accompanied with remunerations from the researcher.

Reliability and validity of instruments used were assessed through monitoring the consistency of the result obtained upon the use of the data collection tools i.e interview guide and questionnaires based on the close relations of the answers/results derived from the same questions administered to different respondents on the same subject matter.

According to Bloor and Wood (2006), reliability is the extent to which research produces the same or similar results when replicated. Validity is the extent to which the research produces an accurate version of the world. An alternative (and positivistic) way of distinguishing between reliability and validity is to think of reliability as a measure of precision (the degree to which a research finding remains the same when data are collected and analysed several times) and to think of validity as a measure of accuracy (the degree to which a research finding reflects reality).

3.9 Ethical Considerations

Ethics include the concerns, dilemmas' and conflicts that arise over the proper way to conduct Research. Ethics help to define what is or is not legitimate to do, or what "moral" research procedure involves. During the study, the researcher obtained introductory letter and identity card from the University management for formal introduction to the respondents. The researcher also made it discretionary for the respondent to reveal his/her name or to withhold it for the

purpose of confidentiality. The researcher also convinced the respondents that the information obtained would be strictly used for academic purpose and shall be kept confidential unless permitted by the respondents to be shared with the members of the public or academia.

3.10 Data Processing and Analysis

Data collected were assembled and outlaid for thorough analysis. These were presented in simple formats like charts, graphs, diagrams and tables and interpretations derived there from. Quantitative data were presented in clear and precise simple literary expressions for ease of understanding and conceptualization by the readers.

3.11 Limitations

Financial challenges in meeting the costs of stationeries, transport, airtime, secretarial services and research assistants. The researcher handled the financial constraints by drawing a budget and sticking to the drawn budget. The researcher also saved early enough so as to raise sufficient funds for the study.

Mixed opinion from the respondents who mistook him to be an investigator not a student. This affected the quality of the study due to misinformation from the respondents and or some respondents trying to withhold information with the fear that it would be used to incriminate them later. To erase doubts in the minds of the respondents, about the motive of data collection, the researcher got introductory letter from the faculty of Humanities and Social Sciences as well as the student identity card for ease of identification. The gate keepers were also useful tools in enabling the researcher access places/persons seen to be inaccessible. The researcher also allowed the respondents to withhold their names where they chose to do so.

Time factor due to the challenges of balancing carrier and the study during data collection and analysis. Time factor was managed by taking annual leave. This allowed him to get enough time to move in the field for data collection then settle down for analysis and interpretations.

Misinformation was handled by corroboration of some information with data collected from other respondents and or primary data gathered from other sources. The researcher could also ask the same question in different ways so as to establish the consistency of the respondents in giving

responses on the same subject. The researcher's co-option of accidental method data collection was also geared at checking the accuracy and consistency of data collected from the respondents with that of the general public.

CHAPTER FOUR.

DATA PRESENTATION, INTERPRETATION, ANALYSIS AND DISCUSSION

4.0. Introduction

This chapter presents data obtained from the field in reference with the research specific objectives which were;

i. To track the origin of dual *mailo* land ownerships in Uganda

ii. To investigate how dual *mailo* land tenure has affected the co-existence between the landlords and the tenants.

iii. To devise appropriate remedies to the short comings of dual *mailo* land tenure if any.

The data were collected from respondents using questionnaires and interview guides as data collection tools chosen by the researcher. These were presented in narrative, tabular, diagrammatic and graphical forms.

The researcher administered 37 questionnaires to the respondents but only 35 were returned fully filled in expression of the respondents understanding and interpretation of the questions laid down and administered. The failure to return 2 questionnaires was partly due to busy schedules of the respondent and misplacement of the questionnaires by the other respondent issued with the questionnaires. This was confirmed through a follow up done by the researcher to find out why the respondents did not participate in the study. Out of the returned questionnaires, 22 were from males and 13 were from females. 28 respondents were interviewed in person. Male interviewees were 19 and female were 9 in numbers and their opinions collected and computed during data presentation, analysis and interpretation. Therefore a total of 63 out of 65 targeted respondents participated in the research and this was 96.9% response and hence the basis for the computation of this result.

In terms of percentage, 74.6% (47) of men participated in the study as respondents and 25.4% (16) of ladies took part as respondents in the study. But looking at the modes of data collection,

55.6% (35) of respondents answered the questionnaires as it was administered to them to obtain general information relating to *mailo* land and its *kibanja* tenancy for ease of corroboration with other data, 44.4% 28) of the respondents participated through interviews and the interview was geared at obtaining technical information from the relevant stakeholders for convenience of comparison with other information collected from other respondents through questionnaires.

The interviewees were mostly professionals in specialized departments such as Chief Magistrate of court, lands officials at the district Land Offices; police land protection personnels, and an arbitrator, the Resident Principal State Attorney (RPSA) and other stake holders like the district Chairman, Sub County Chairpersons/Mayors and the Area Land Committees. Some selected members of the public who were either tenants or landowners participated in the study by answering the questionnaires.

The researcher established that a greater number of male folks have got claim of ownership over land and *kibanja* than the female folks. The response retrieved also reveals that the literacy level is still high among the male than female gender as more male participated in answering the questionnaires than female.

This has been summarized in the table below:

Table 2: Showing the Number of Males and Females who Participated in the Study.

SEX	**QUESTIONNAIRES**	**INTERVIEW**	**PERCENTAGE**
MALE	28	19	74.6
FEMALE	07	9	25.4
TOTAL	35	28	100
PERCENTAGE	**55.6**	**44.4**	**100**

Source: Primary Data 2016

Most of the respondents were willing to disclose their names and to share their opinion openly with the researcher and other would be readers. 60% of the respondents that is 38 respondents agreed that their opinion be shared with other readers and members of the public as the matters of land are sensitive to the heart of everyone and the major cause of community disharmony.

They therefore felt that by sharing it with the public it would help in sharing opinions and designing solutions to the pressing challenges in *mailo* land tenure. However, 40% of the respondents which is an equivalent of 25 respondents expressed reservations in having their identity revealed due to personal reasons and for confidentiality which the researcher had earlier intimated to them.

This symbolized that in academic research the respondents are open minded and willing to share their opinion both within the academic arena and with the entire world for ease of transforming our society through collective effort.

4.1. Origin of Dual *Mailo* Land Tenure in Central Region

The researcher expedited his study by distributing the questionnaires and conducting interviews to the respondents and the responses regarding the origin of dual *mailo* land tenure were as follows;

8 equivalent of 12.9% respondents mostly male landlords of Buganda origin admitted knowing the origin of *mailo* land tenure. They asserted that *mailo* tenure was introduced by the colonialists and was concretized in the 1900 Buganda Agreement. This implies that prior to this agreement there was no *mailo* tenure and the land owners were communally using their land under the control and guidance of the cultural leaders. 3 female respondents a representation of 4.8% expressed little knowledge on the origin of *mailo* land although some admitted that it was brought by the Buganda Agreement. But this idea was mostly rooted in the views presented by the landlords. 21 (33.3%) tenants on the other hand did admit knowing about the 1900 Buganda agreement but expressed little idea on how it came about other than merely asserting that it was introduced by the British.

Further details was presented by the then District chairman now Minister without Portfolio Al Hajji Abdul Naduli who stated that prior to the 1900 Buganda Agreement, the Bagandans used to enjoy unlimited land tenure without any *kibanja* claim. However, when the missionaries under the leadership of Morton Stanley came in 1876, they visited Kabaka Mutesa who wrote a letter requesting the queen to send teachers to come and teach his subjects about land matters. Indeed

the teachers were sent and they found that the land ownership in central region was similar to the one in England.

According to Naduli, these teachers created a new class of land ownership of *kibanja* holders and this was upon dividing the land and awarding it to the Kabaka who belonged to the *Bataka* clan and was also referred to as the '*sabataka'*. This information was corroborated by Kasozi A.B.K. who agreed that *kibanja* tenancy was introduced by the colonialists upon singing the 1900 Buganda agreement giving the privileged position to the landlords over the tenants.

5 respondents representing 7.9% especially the educated ones reserved themselves from expressing opinion over this area and merely referred the researcher to text books claiming that the question was more scholarly and thus necessitates book work. This therefore made the researcher to concentrate on the less educated but elderly respondents who could comprehend English and whose informations were corroborated with that of other scholars like Okuku and Kasozi A.B.K.

Police officers contacted expressed little or no knowledge about the origin of *mailo* land ownership although those in leadership position admitted that through in service training, they had come to know *mailo* land and the status of the tenants in the land without paying detailed attention to the origin of the same.

Police personnels from land protection division clearly stated that the genesis of *mailo* land was in the 1900 Buganda agreement and that the current conflict has arisen due to multiple factors such as land sales to people who are not from the Buganda region and has little knowledge in landlord-tenants relationship. Some of these land owners wanted vacant land where they could carry out some commercial activities like cattle grazing or crop farming therein, some tenants were also blamed for selling land without seeking the consent of the landlords which breaches the legal and cultural mandate of the tenant. Above all much as the population kept increasing, the land for settlement and cultivation was not increasing, and therefore some people decided to encroach into land or cultivate portions which did not belong to them causing land conflict.

However, both land lords and the tenants who responded to the study agreed that the then tenants and the landlords used to co-exist peacefully without any rift between them over claim of superiority or use of a specified piece of land. They attributed the current conflict to have been caused by egocentricism of the landlords and the false claims of the tenants over pieces of land which they didn't even own. It was also found out that the mushrooming land bonanza whereby the proud land owners started selling off their land to people who later also sold it out to other people escalated the land disputes since the new buyers failed to accept and live peacefully with the tenants.

The Resident Principal State Attorney (RPSA) asserted that the landlord has legal interest in the land based on the land title he/she holds meanwhile the tenant has an equitable interest in the land based on the occupancy and development put on the land. But the legal claimant and the tenant with equitable interest has always clashed over usufruct right thereby causing land-*kibanja* dispute.

The researcher learnt from the gathered data that very few people knows about the details of the origin of *mailo* land tenure and that their mindset is only set on the British as the initiators of this system without ascertaining the intention and how the allotment was done. But better still half a loaf is better than none as their little knowledge and their response to the study reveals that they wanted to learn more about the origin of this land tenure. The researcher however corroborated his study with the scholarly literatures from Muyomba Nicholas and Mwebaza E.A which revealed that indeed dual *mailo* land ownership was the initiative of the colonial powers which was born with a stroke of a pen in the 1900 Buganda Agreement signed between the colonial agents and the Buganda leadership hence turning the former land owners into mere tenants.

4.2 *Kibanja*/Land Ownership

The respondents revealed that much as the quest for land ownership is as old as 1900 Buganda Agreement, but *kibanja* tenancy has also remained predominant. 79.4% of respondents were *bibanja* holders as 20.6% were the land owners. In terms of figures, 50 respondents were tenants as 13 were land owners. Out of these respondents, 15 were women tenants as 7 were female land owners.

This indicates that more tenants were discovered to be having *bibanja* in titled land. Most of these tenants and land owners were therefore men as opposed to female and hence a revelation that more men still own land and *kibanja* than women.

This has been summerised in the table below;

Table 3: Showing the Kibanja-Land Ownership

OWNERSHIP	**SEX**	**NUMBERS**	**PERCENTAGE**
TENANTS	FEMALE	15	23.8
	MALE	35	55.6
LANDLORD	FEMALE	6	9.5
	MALE	7	11.1
TOTAL		**63**	**100**

Source: Primary data 2016

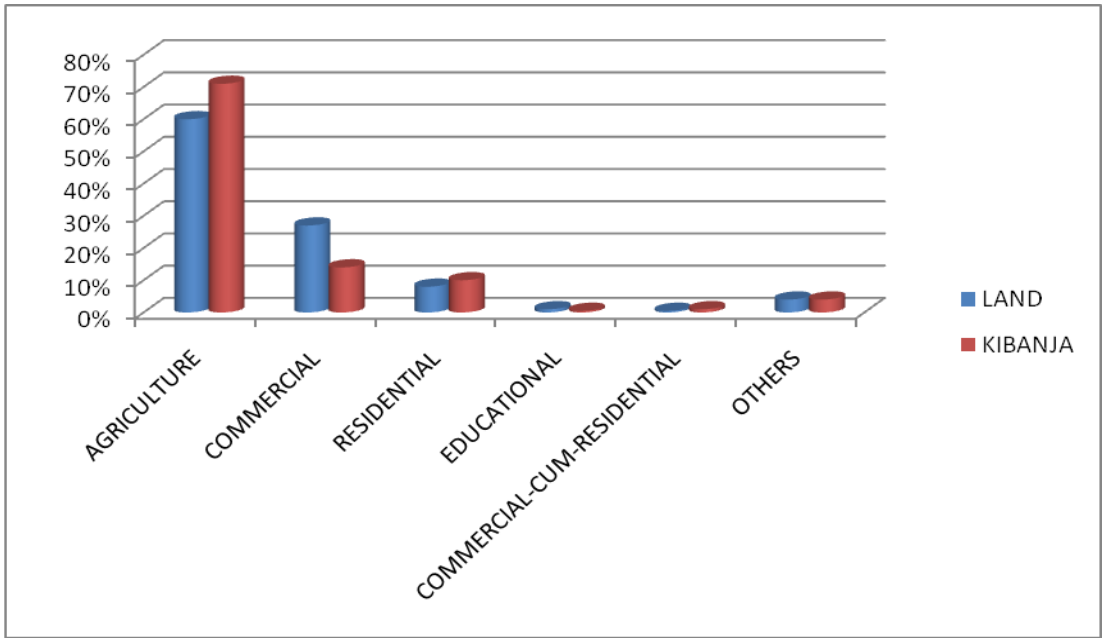
4.3 *Kibanja* or Land Use

The study revealed that most of the lands were being used for agricultural purposes (60%), commercial purposes (26%), residential purposes (8%), educational purpose (1%), commercial-cum-residential purpose (1%) and others which include rental, bush fallowing, cultural and hunting purposes and other community interest (4%). The reason is that the backbone of our economy is based on agriculture and everyone is yearning to create more space for tillage. This was worsened with the increasing population and yet space for expansion had remained inelastic. Even those who were using land/*kibanja* for residential purposes were also seeking for portions where they could practice agrarian activities such as opening crop farms and grazing ground for animals thereby escalating the crisis for space. The mushrooming educational institutions like private universities, schools and other higher institutions of learning also added pressure to land/*bibanja* crisis in central region. Such schools and institutions are conflicting with the neighbors and other land/*bibanja* owners for boundaries and hence encroachments due to quest for more space for expansion and settlement.

Relatedly, in terms of *kibanaja* ownership, *kibanja* use in agriculture accounts for 71%, commercial use 14%, residential use 10%, educational use 0.5%, commercial-cum-residential use 1% and others remains at 4%.

This can be diagrammatically presented as below;

Figure 1: Showing the Land/*Kibanja* use in Central Region



Source: Primary Data 2016

4.4. Period of Use of *Kibanja*

Table 4: Showing Period of Use of *Kibanja*

PERIOD IN YEARS	NUMBER OF RESPONDENTS	PERCENTAGE
1-5	5	7.9
6-10	11	17.5
11-15	7	11.1
16-20	14	22.2
21 AND ABOVE	26	41.3

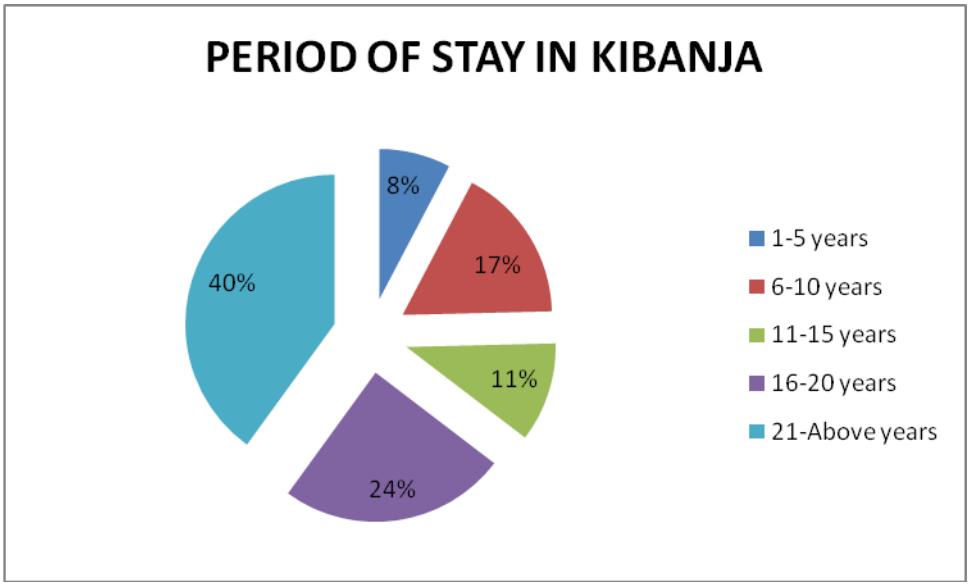
Source: Primary Data 2016

Research result above indicated that between the years 2011 to 2015, 5 respondents had stayed in their *kibanja* for a period of 1-5 years. This was represented by 7.9%, 11 respondents asserted that they had stayed for 6-10 years an equivalent of 17.5%, 7 respondents claimed that they had settled in their portions for a period of 11-15 years and this was computed to stand for 11.1% of the respondents, 16 respondents accepted having lived in their land for a period of 16-20 years which was equal to 22.2%. The majority of the respondents had lived in their *bibanja* for 21 years and above and these were matured people who had co-existed in their *bibanja* peacefully with their landlords for long. This was represented by 26 respondents and an indication of 41.3%.

The above is indicative of the fact that much as there is conflict between the tenants and the land owners; most of the tenants have occupied their portions for a long period of time. This is also indicative of the fact that conflict over *kibanja* is more prevalent among those who acquired their portions lately or acquired from the previous owners off late compared to those who had settled from time immemorial. But the researcher also learnt from the land owners through probing questions that their tenants most times extend the boundary of their *bibanja* so as to occupy more portion than they actually owned due to the increasing number of people in their household who needs more space for occupancy and cultivation and also due to the need to have more claim in case there is need for compensation.

This can also be diagrammatically presented as below

Figure: 2 Venn Diagram Showing the Period of Use/Stay in *Kibanja*



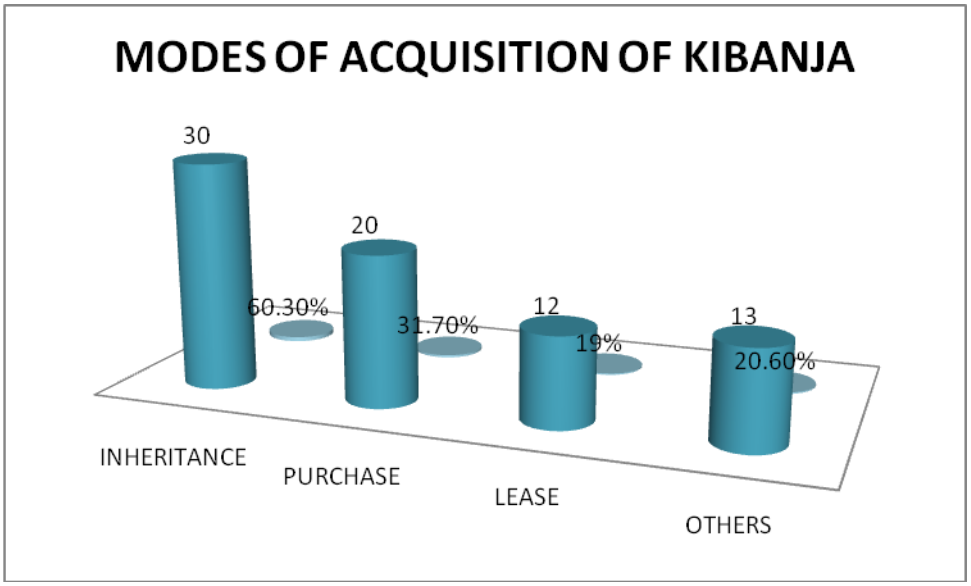
Source: Primary Data 2016

4.5. Modes of Acquisition of *Kibanja*

In regard to the modes of acquisition of *kibanja*, 38 (60.3%) respondents admit that they inherited them from their late parents/relatives and are meant to pass it to the next generation being a cultural land, 20 (31.7%) of the respondents asserted that they purchased their *bibanja* from either the former owners or the successors who decided to dispose off their portions, 12 (19%) respondents replied that they acquired their portions through lease as 13 (20.6) respondents expressed that their acquisition were through other means such as gifts, rentals, stewardships and squatter status.

This can be summarized as below;

Figure 3: Showing Modes of Acquisition of Kibanja



Source: Primary Data 2016

The researcher deduced from this response that most *kibanja* acquisitions is through inheritance but the successors instead of settling in their *bibanja* to foster personal development opts to dispose it off by selling part or the whole of their acquisitions to the potential buyers then use the proceeds at their pleasure. When they learn that there is inadequate space for them to settle in, these seller would come back to claim for what they had earlier sold asserting that they had hired it to the buyer or mortgaged it for a little loan. This additional information was given by respondents who were local council leaders but also owning the *bibanja* when the researcher came into contact with them by accident. The same information was confirmed by the police who asserted that they received such complaints and responded to it but only to realize that the buyer is in possession of a valid sales agreement duly signed by the seller, buyer and the local leaders.

4.6. Documentary Evidence of Ownership of Land/Kibanja

As proof of ownership of land/*bibanja*, the respondents had the following evidence to adduce;

13 respondents presented land titles as their proof of land ownership this was an equivalent of 20.6%. These included lease holders who had leased land from the *mailo* owners who were in possession of the lease title.

35 respondents admitted being in possession sales agreement as their documentary evidence an indication of 55.6%. This was inclusive of those who were still in the process of acquiring their land titles but had not yet finalized it.

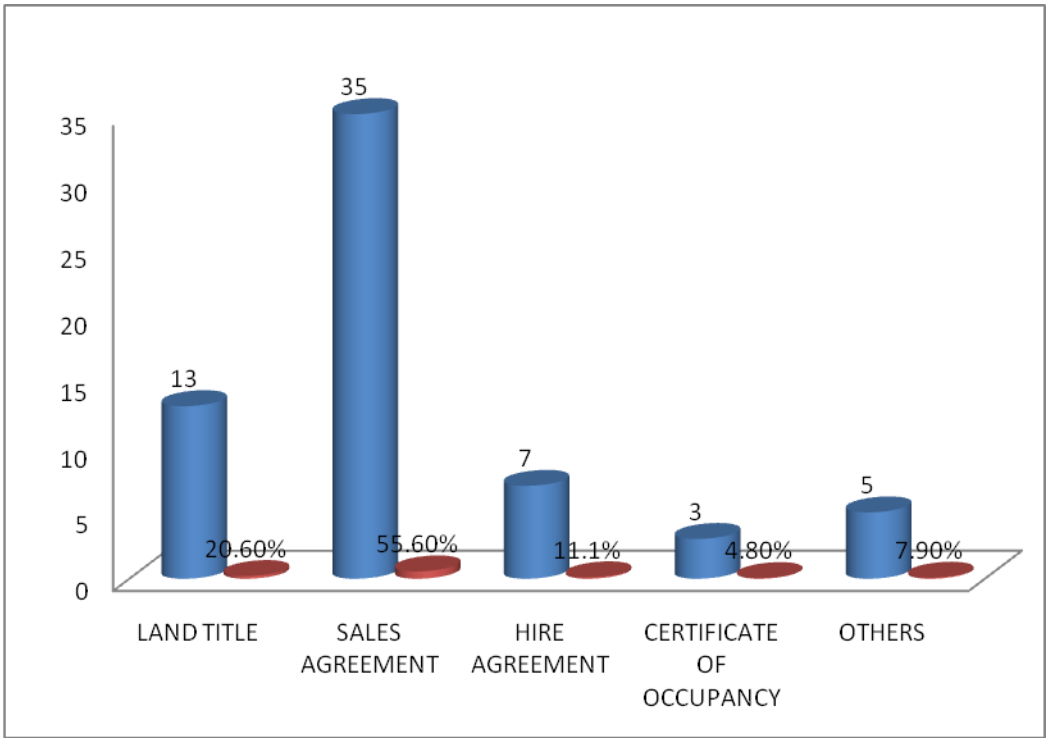
7 (11.1%) of respondents had land hire agreements which were documents written between the land owners and the hirer and approved by the local authority as acknowledgement of consent between the lessor and the lessee for the use of a specified portion for a defined duration of time.

Only 3 which is representative of 4.8% of the respondents admitted having certificates of occupancy as their documents for claim of *kibanja* tenancy in the land of landlords and were actually acknowledged by the landlords as authentic documents of claim of ownership.

The balance of the respondents that is 5 i.e 7.9% asserted that their acquisition of portions of land and *bibanja* were through other means such as wills, mutual understanding among family members, court decisions, mortgage agreements and minutes of clan decisions in the meetings.

This can also be presented as below;

Figure 4: Showing Evidence of Ownership of Kibanja/Land



Source: Primary Data 2016

The study revealed that the actual proof of land ownership is a certificate of title. This was confirmed by the Registrar of Titles Bukalasa who asserted that the only documentary proof of land ownership is a land title. But the researcher also noted that some purchasers present sales agreements as documents of land ownership but according to the registrar of titles a sale agreement is not a sufficient document of ownership. The study also revealed that *kibanja* transactions are documented with sales agreements signed between the sellers and the purchasers. But the study further indicated that in rare cases do *bibanja* buyers take trouble to convert their portions into land by buying off their *bibanja* interest into land. This was attributed to unclear policy or legal framework which does not specify the modalities and proportion of sharing when it comes to converting from *kibanja* interest into land ownership other than living it to the willing buyer-willing seller based on mutual understanding. Needless to say was that the sales agreements rarely or did not specify the size of the *kibanja* other than describing the

neighboring *bibanja* and physical features as the basis for showing location and size of the *kibanja*. The researcher also established that local plants commonly referred as *lwanyi* and *ebirowa* were the most common plants used as demarcation marks in the central region. But in instances where *ebirowa*/*lwanyi* are used to show boundary marks of the *kibanja* they are either uprooted to make it difficult to trace the exact boundary line or are removed and re-planted at another point with the intention of enlarging the *kibanja* portion. With the changes in the physical features and transfer of ownerships through sales, conflicts over the size and the boundary lines of *bibanja* had been so eminent between the landlords and the tenants since the claim of the *kibanja* size leaves the landlord with little or no space to utilize. It has been difficult for the land owners and the tenants to reach a mutual understanding and hence end up into conflicts or legal battles.

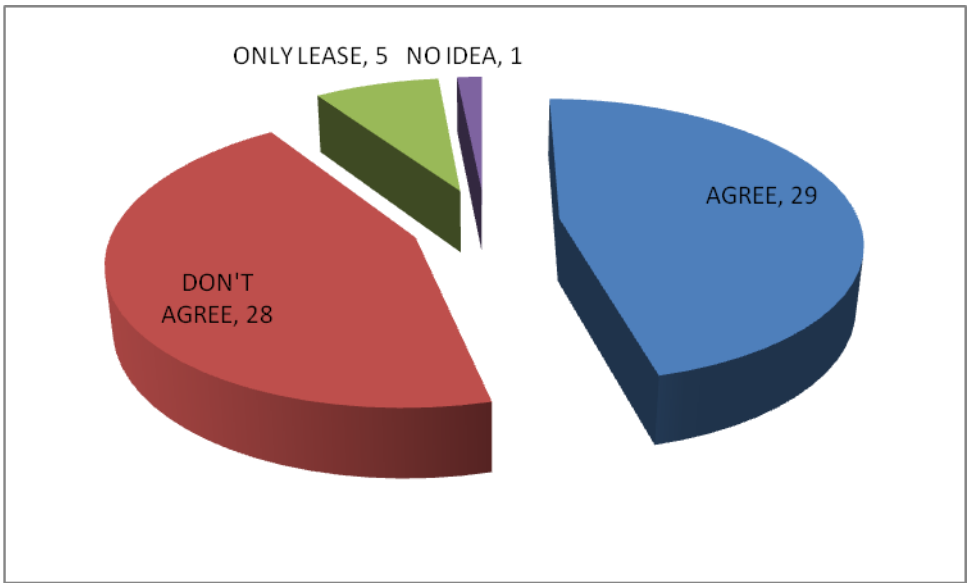
4.7. Opinion on Leasing or Giving Out Part of Land to Other Tenants

Respondents interviewed and those who answered the questionnaires expressed mixed reactions to giving their land to the tenants. 46% (29) of the respondents supported the idea of giving out part of land to the tenants inform of rent for a specific duration of time. But they also admitted that some of the bonafide occupants had been in their land for long and have retained their tenancy since then. 45% (28) of the respondents stated that they would not give their land to the tenants since they would also need vacant land for cultivation, rearing animals and other commercial activities without the inclusion of the *kibanja* tenants save for the tenants who have lived in that land from time immemorial. They also admitted that *bibanja* holders are cumbersome to co-exist with since at times they claim for more portions leaving the landlord with little or no space to occupy. Worse still the rent derived from land use was too meager to sustain the landlord's demand. 8% (5) of the respondents who were landlords responded that they would only lease their land instead of giving it to the tenants because lease fee is more attractive than *busuulu* and above all after the expiry of the lease period, the land reverts to the owner and any development in the land becomes the property of the landlord. Only 1% of the respondents i.e 1 person could neither admit leasing nor giving part of his land to the tenants.

But could land lease and giving portions to tenants be related to the current land hire where portions of land are given out to people to cultivate for an agreed period of time in return for a fee? Could it be that land hire would best substitute *kibanja* tenancy and hire fees be replaced with *busuulu* payment? Whichever option is taken, the conflict over usufruct rights is yet evident.

This has been summarized in the Venn diagram below,

Figure 5: Showing Opinion on Giving/Leasing Land to Tenants



Source: Primary Data 2016

The researcher therefore concluded that land owners are more tolerant of the tenants who have lived in their land for a long period of time especially in the ancestral portions but they are more reserved in giving more portions to the new tenants and instead prefer to rent it out for better remunerations as rent is not equitable to sale and would revert back after the expiry of the rent period.

4.8. Challenges When Accessing Land/*Kibanja*

The study revealed that encroachment into land/*kibanja* by those who claim ownership over portions which neighbor their land/*kibanja* is common. This is coupled with some land/*bibanja* owners leaving their land/*kibanja* without any attendance for a long period of time creating the impression that they had abandoned their land/*kibanja* for good. 11 landowners responded that after leaving their land for a year and or more, they found some encroachers already settled in their land and were not willing to leave without compensation, this was an equivalent of 17.5% of the study population, similarly, 21 tenants responded that upon relocating to another locality or peri-urban or urban areas and leaving their portions for more than two years, the landlord would dispose it off on the assumption that the owners have abandoned it whereas not. This was representing 33.3% of the study population. Worse still; the encroachment came as a result of tampering with the boundary marks by removing the mark stones or *empaanyi* trees making the neighbors not to know the exact demarcation. In the event that the adjacent neighbor takes note of the encroachment, it would take time and resources to have it corrected through the intervention of local leaders, police or court. 5 land owners lamented that they were chased away from their land by the tenants and were threatened with bodily harm or death simply because they were absentee landlords. This was equivalent to 7.9%. Similarly, 9 tenants asserted that they faced challenges of accessing their *bibanja* after being chased away by the landowners on the assumption that they were encroachers and yet they were merely meeting a new landlord who had bought from the former land owner without being introduced to the tenants and this was representative of 14.3%. 17 (27%) respondents expressed mixed opinion on the challenges when accessing their land/*kibanja* their portions being sold away by the caretakers, the persons hiring failing to vacate within the specified time frame and the portions being claimed by their neighbors.

This has be summed up in the table as below;

TABLE 5: Showing Challenges When Accessing Land/*Kibanja*

S/No.	CHALLENGE	No. OF VICTIMS	PERCENTAGE (%)	VICTIMS
1	ENCROACHMENT	11	17.5	LANDLORDS
		21	33.3	TENANTS
2	THREATENI9NG VIOLENCE	5	7.9	LANDLORDS
		9	14.3	TENANTS
3	OTHER CHALLENGES	17	27	BOTH LANDLORDS AND TENANTS
TOTAL		**63**	**100**	

Source: Primary data 2016

From this assertions, the researcher learnt that land/*kibanja* claim was based on a multifaceted aspects but the most common ones are the aspect of the land or *kibanja* remaining unutilized for a long period of time which creates the impression that owners are either nonexistent or have abandoned it. But even where the owners are known or come to claim for their property, these encroachers would want to be compensated for the development they have put in the land yet in the course of utilizing the land they reaped the benefit of harvest without remitting any piece of it to the landowner. Worst of all when coercive approaches are used to remove them, they tend to seek protection from court and political leaders and hence prolonging the time of the true owners from recovering their property. In worst instances the tenants turn against the landowners and lynch them.

4.10. Challenge When Subdividing Land/*Kibanja*

Just as challenges were encountered during land accessibility, the land owners also encountered challenges of sub dividing the land/*kibanja* by removing boundary marks during the process of

sub dividing the land/*kibanja*. 22 respondents stated that the tenants are ignorant of the difference between the land and *kibanja* boundary and hence when the land owner demarcates his/her land, the tenants would cry that their *bibanja* is being taken whereas not. They would respond by uprooting the mark stones and or reporting the matters to police and other offices like that of RDC for redress. This was mostly accompanied with malicious damages to crops and plants found in the portion in dispute hence sparking a legal battle.

6 tenants on the other hand blamed the landlords by stating that land owners mostly begin by selling off their land then later send the new owners to go and survey their portions without notifying the tenants and the local leaders. This makes these new buyers to appear strangers to the local community and hence easily mistaken to be land grabbers who must be resisted and fought.

15 respondents especially tenants agreed that most times landlords come with the surveyors without giving prior notice and mostly when attempts to negotiate with the *bibanja* holders had failed. This makes them to have the impression that the landlord has come to sell off their *bibanja* thereby rendering them landless since the new owner would chase them away without any form of compensation.

2 respondents confidently confirmed that they had not got any challenge when subdividing their land since they had earlier sat and agreed with their tenants on the aspects of surveying and subdividing their land during which the tenants were involved in the process.

18 respondents concurred with all the above but blamed the challenges raise to lack of cordial relations between the tenants and the landowners in the sense that the tenants only waits to be followed by the landlords without them taking the initiatives to look for the landowners and negotiating the tenancy terms. This makes the landlords to look for a distant buyer who is willing to purchase the land. But such buyers were found to be faced with the challenges of negotiating with the tenants since they are most times deceived that the lands they are buying are tenants' free whereas not.

The researcher noted from the study that some land buyers deal in land without carrying

preliminary investigation before buying which makes them buy tenants filled land and when the challenges of subdividing and creating a free space for the landlord comes, it would be too late to secure the land. This leaves them carrying the title which has no value because they neither get sufficient rent from the land nor access the land for personal development. The study also indicated that there is a high level of ignorance between the landowners and the tenants on laws relating to land and *kibanja* tenancy which makes the two parties to keep fighting on matters which could have been easily resolved through mutual consent without resort to law.

This can be summarized as tabulated below;

TABLE 6: Showing Challenges Faced When Subdividing Land/*Kibanja*

S/No.	CHALLENGES	NUMBER
1	IGNORANCE OF THE LAW	22
	REMOVING BOUNDARY/SURVEY MARKS	
	MALICIOUS DAMAGE TO PROPERTY	
2	SELLING LAND WITHOUT NOTIFYING TENANTS	6
3	SURVEYING WITHOUT NOTIFYING TENANTS	15
4	POOR COORDINATION BETWEEN TENANTS AND LANDLORDS	18
	LANDLORDS/TENANTS NOT KNOWING EACH OTHER	
	LACK OF WILLINGNESS TO NEGOTIATE ON TENANCY	
5	NO CHALLENGE ENCOUNTERED	2
TOTAL		**63**

Source: Primary Data 2016

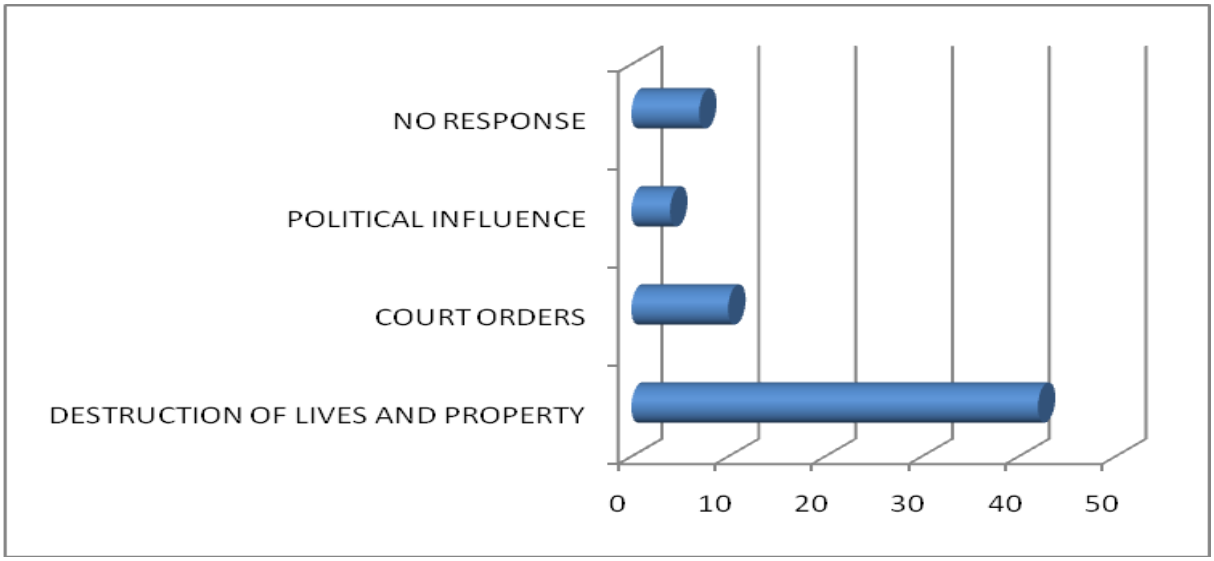
4.10. Challenge When Developing Land/*Kibanja*

The study established that in the course of developing the land, the discontented parties could display their emotions by maliciously damaging the development put in the portion in dispute especially crops, structure and at times animals. This was represented by 42 respondents. At times, the land owner is lynched by those who consider him to be a land grabber in the event that he wants to force them out of the portion in dispute where they are considered to be illegal occupants. Worst of all both the landlord and the tenant being interested in developing the land

would start fighting for space and claim of rights over the same portion. This escalated conflict and led to destruction of properties and lives. 10 respondents asserted that court orders have deterred their development because when tenants run to court to seek for injunctions staying their eviction or maintaining the statusquo of the land in question, it would in the end deter development of the landowners. Political interference was cited by 4 respondents as equally instrumental in deterring development on both land and *kibanja* majorly when political leaders incite the tenants to go back to their land even after when it was established by court that they were illegal occupants and were ordered to vacate. This was prevalent during the reign of Hon. Aidah Nantaba as the State Minister for Lands when she ordered the tenants who had disposed of their bibanja to re-occupy it. This took place at Vvumba in Kalagala sub county in Luwero district in the year 2014. 7 respondents did not express their opinion on this study question.

This can also be presented as displayed below;

Figure 6: Showing Challenges Faced When Developing Land/*Kibanja*



Source: Primary Data 2016

The research expedited indicates that court has proved insignificant in circumstances where political voice is echoed since the populace adores political voices more than court orders which they consider mere verbal utterance without any impact less implemented by the enforcement

agencies like police and bailiffs. It was further noted that the incivility expressed in terms of destruction of properties and at times lives is attributed to failure of both parties to reach a compromise and yet wants to retain and or claim ownership at the expense of the already sitting occupants. It's also based on the advice got from various people in offices and in the community handling matters related to land/*kibanja*.

4.11. Measures Put in Place to Address Challenges Faced When Developing the Land.

36 respondents contacted came out with a series of measures to address the challenges of development and these were as presented below;

8 i.e 22.2% respondents suggested that erecting a defined boundary line with the use of mark stones, live fence re-enforced with wire fence would offer remedy as this would deter the encroachers, illegal claimants and possible damage which may arise there from. One respondent expounded further that survey must also be done on the land by the surveyors from the lands office and a survey report furnished to the relevant stakeholders like the landlord, District surveyor and the survey and mapping office. This would solve the future challenge of boundary claim such that even if the boundary mark is removed from the ground, a technical team could come and re-erect the boundary line based on the record in the cadastral print which remained at the land offices during boundary opening. This opinion was in agreement with that of the District Surveyor.

According to the District Surveyor Luwero Mr. Sserwambala Ivan,

"some errant people remove survey marks on the assumption that it would deter the mapping office from re-establishing the removed mark stone whereas not". "*As long as the mark stone was mapped in the deed plan, even if it's removed, the survey office can use their technology to identify then fix it back"*.

This is also a criminal case as one can be charged of Removing a Survey Mark as stipulated in the Penal Code Act contrary to section 338 and 339.

5 respondents especially landlords proposed that tenants were to be sensitized by the law

enforcement agencies like the police through it community policing program on the dangers of damaging crops and properties in the portions in dispute as this could attract legal actions including arrests and detention. It could also attract revenge from the counterparts which may lead to loss of lives. This was equivalent to 13.9%.

4 police respondents including the officer in charge Land Protection Office Luwero representing 11.1% advised that law enforcement agencies should also intervene and offer redress to the grievances before it could lead to fatalities. This could be done alongside district stakeholders and legal experts so as to avoid incivility and for the purpose of restoring calm in the society. The said officer also advocated for massive sensitization of the masses on laws relating to the landlord-*kibanja* relations.

15 respondents precisely tenants and local leaders advocated for mutual understanding through meetings between the disputing parties as a proactive measures to be employed to resolve matter before resort to other coercive measures. This was equivalent to 41.7% response. 4 respondents did not respond to the questions relating to this matter and this was equivalent to 11.1% non response.

The researcher noted that the challenges in developing the land arise when the prior challenges of accessibility and subdivision is not properly settled. The aggrieved party would not sit back and watch the opponent enjoying the occupancy and use of the portion where he/she also has claim of rights. Therefore to deter such conflict all possible attempts should be employed to settle the conflict before any development is put on the ground to avoid incurring more losses that could have otherwise been prevented. Therefore laws must be respected and law enforcement agencies must offer equitable and expeditious justice to avoid escalation of conflict and to avoid delay in offering immediate remedy to the emerging conflicts.

4.12. Measures Taken by Other Stakeholders to Address the Challenge Faced When Developing the Land.

32 respondents of whom 21 tenants, 5 local council leaders and 6 landlords preferred that community sensitization should be done to educate the aggrieved persons on the best options to

take in following the alleged matter without resort to illegal means. This was in total agreement with the police respondents who emphasized massive sensitization on land laws as a proactive method so as to solve the matter before resort to unlawful methods.

The registrar of titles Bukalasa in spite of agreeing with the above added that the land office should ensure that procedures in acquiring and registering land are logically followed in liaison with the local leaders so as to avoid wrangles, damages and loss of property and lives during land disputes.

The Chief Magistrate Luwero asserted that land offices and committees handling land matters be established at lower local council levels so as to prevail over land disputes at its onset before it can escalate to greater magnitude. This opinion was shared by the District Criminal Investigation Officer Luwero Mr. Jjagwe Raymond on the strength that it strengthens local unity and empowers local leaders to offer redress to local problems before legal hands are called upon. However in the event that it fails, legal approach should be employed. 3 respondents proposed that by-laws should be formulated which is accompanied with fines and other reprimands which summarily instills punishment in the defaulter so as to ensure compliance avoid rigorous court procedures and to empower local remedy to such vices.

The above response enabled the researcher to conclude that individual opinion and those pointing towards the institutions/stakeholders are more or less synonymous in the sense that both advocate for a mutual approach to settling land/*kibanja* disputes without resort to wrangles. However legal approach was not ignored as the next possible option incase mutual consent fails to yield results. This implies that the public still upholds the spirit of unity and acknowledges that laws must be respected in the event of disputes. Above all it must be noted that land/*kibanja* are immovable and does not depreciate overtime, so people fighting for it must be cognizant of that fact and to devise a legitimate way of acquiring and utilizing land/*kibanja* in a manner that promotes peace and harmony.

4.13. Form of Land Ownership to be Adopted by Government to Solve Land Dispute

In view of the forms of land ownership in Uganda to wit customary land tenure, freehold tenure, leasehold tenure and *mailo* tenure, 27 respondents alluded to freehold as the best option since the land is owned in perpetuity and any transaction between the landlord and the tenant is on mutual understanding, 25 respondents preferred *mailo* land tenure on the strength that tenants in *mailo* land were protected by the law from eviction and could harmonize their tenancy through the available options of *busuulu*, sharing, buying off and compensation. On the other hand, 4 respondents besides agreeing with mailo land tenure, added that customary tenure was not any far from *mailo* system because *mailo* system is based on the customs and tradition of the Bagandans but since customary system does not create provision for tenants, they asserts that this would eliminate disputes. Regarding leasehold tenure, 3 respondents decided that leasehold tenure be adopted because the lessee would only use the land for a specified duration of time and then hand it back to the lessor. This they argued would resolve the imminent and existing disputes since the lessor would only be restricted to the portion leased and for the time period specified. 4 respondents preferred public land where the government takes discretion to allocate or gazette some portions of land for settlement and or development to the desired persons. This in essence eliminates conflict since the government would allocate each party their portions based on the demand and the peculiar activity to be executed therein.

This result implies that most respondents are in agreement with having freehold tenure as it gives sole ownership of land to the landlord without *kibanja* claim from the tenants unless hired by the landlord and this was looked at as the best remedy for solving the land/*kibanja* dispute. The respondents were also in support of the *mailo* land tenure more especially the tenants since it creates provision for *kibanja* tenancy. Their non preference of other forms of tenancy like customary tenure indicates that it's not complacent with the customs and tradition of the community of central region and so could not easily be adopted. Leasehold on the other hand is attributed to be having some semblance with *kibanja* tenure since the leaseholder is only entitled to use the land for a specified period of time thereafter the land reverts to the owner just as the tenant can loose *kibanja* tenancy due to failure to pay *busuulu,* lack of sufficient proof of kibanja claim and abandonment of *kibanja* for more than 3 years. Much as leasehold tenure may not be

completely compared with *kibanja* tenancy but all the two forms of tenancy doesn't give total ownership of land to the occupant. However, it should be noted that all forms of land tenure can be cumbered with *kibanja* tenancy as long as the proprietor agrees to rent it out or allows other people to settle in it based on the agreement between the land owner and the tenant. But it may be difficult to anticipate the intention of the said tenant be it in *mailo*, leasehold, freehold and or customary land. The disputing parties should instead opt for an amicable settlement of their dispute instead of making preference of certain forms of land tenure which may turn to aunt them in future.

This could also be elaborated as laid down in this table below;

Table 7: Table Showing Types of Land use in Central Region

TYPES OF LAND TENURE	**No. OF RESPONDENTS**	**PERCENTAGE (%)**
PUBLIC LAND	4	6.3
LEASEHOLD	3	4.8
CUSTOMARY LAND	4	6.3
MAILO LAND	25	39.7
FREEHOLD	27	42.9
TOTAL	**63**	**100**

Source: Primary Data 2016

4.14. Land Lords-Tenants Relationship

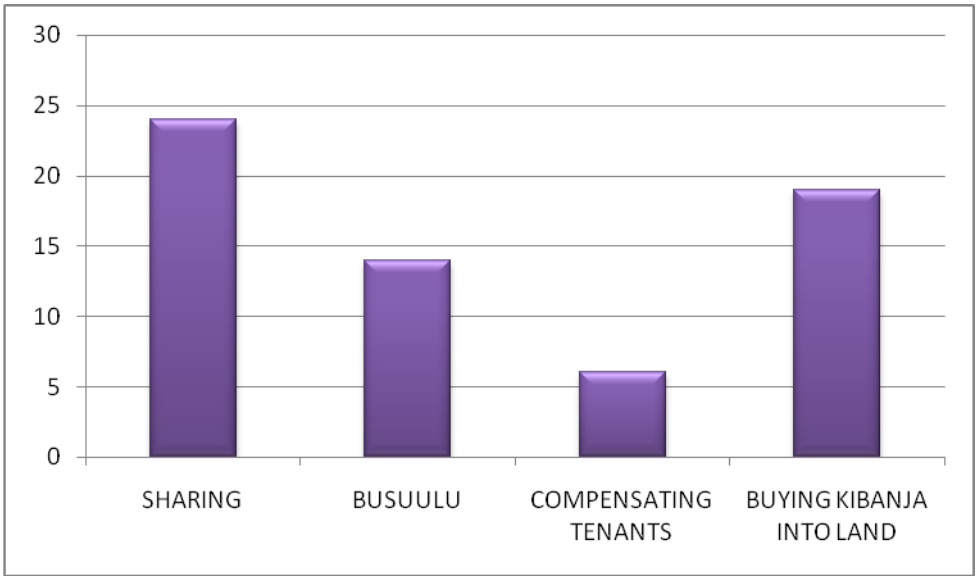
Inspite of the 4 options which the government has put in place that is paying *busuulu*, buying off *kibanja* into land, compensating the tenant and sharing the portion in question with the landlords, 19 respondents especially 8 local council leaders, 5 Area Land Committee officials and 6 tenants opined that the tenants should buy off their portions into land especially if the *kibanja* was already developed and the tenant has settled in it for quite a long period of time, additionally the respondents decided that it would be better for the government to buy off the *kibanja* into land from the landlords then give to the tenants in return for a small fees over a

prolonged duration of time during which the tenants would assume full ownership. 14 tenants opted that landlord should accept *busuulu* from the tenants as ground rent for the use of the land. 6 respondents asserted that landlord should compensate the tenants so that the tenant could leave the land and relocate to another place or use the proceeds of compensation to buy land elsewhere. This they say would enable the landlord to enjoy the use of land without any encumbrances from the tenants, 24 respondents were of the opinion that the landlord would equitably share the *kibanja* with the tenants as most tenants were too poor to buy their *bibanja* into land and yet they also needed space to settle and develop. Of these 16 were tenants and 8 were landlords. This they assert would also create space for the land owner who could be in need for space to settle in to effect other development. These opinions were received from both the land owners and the tenants.

From this response, the researcher noted that since most tenants are poverty stricken and yet they also need space for settlement, the option of sharing would be more appropriate as this enables them to cheaply gain land with its title without going through the hurdles of parting with hefty amount of money to purchase the land. However, the researcher proposes that the tenants must take note that in spite of sharing the land, great interest must be put on who would meet the cost of processing the land title as this might come with additional costs and it might affect the proportion of sharing. This might even be more complicated if the portion of sharing is for the deceased relatives because the beneficiaries must first process the letter of Administration before acquiring the land title which inflates the cost of processing and the subsequent acquisition of the land title. But in the event that the tenant can buy the whole *kibanja* into land, it would be better as long as the tenant could afford the cost as this would enable them to retain their portion and enjoy unencumbered occupancy and use. The worst challenge was realized in the land law which does not specify the proportion of sharing as well as the price of land other than leaving it on the balance of willing buyer-willing seller. This has made tenants with weaker bargaining powers to be cheated as at times middlemen inflate the amount with intention of gaining from the same proceeds.

This can also be graphically represented as below;

Figure 7: Showing Landlords-Tenants Relationship



Source: Primary Data 2016

4.15. Respondents Opinion on *Busuulu* Fees

18 respondents interviewed revealed that *busuulu* payment has existed since the colonialists created land/*kibanja* ownership and therefore it would continue to exist. However, this view was mostly held by the *bibanja* holders since they claim this enables them to enjoy occupancy of a portion of land perpetually without fear of being evicted as long as they were known by the land owner and were paying the rent fees. But 5 landlords put it that the *busuulu* rent was too meager that its return could not contribute to their welfare compared to the benefits that the tenants reaped from the land. They therefore asserted that this rent could be increased or be abolished completely so that all tenants became landlords by buying their portions into land.

The landlords on the other hand asserted that *busuulu* payment has lost value since most tenants default to pay, more so the amount is too meager compared to the proceeds the tenants reap from their land. Above all the land would be insignificant to the land title holder unless the land is

gainfully profiting the owner.

On the other hand, 15 respondents 11 of whom were tenants and 4 landlords agreed that sharing of *kibanja* between the landlord and the tenants would offer the best remedy since there would be no physical costs attached in terms of money other than processing the land title. But they all disagreed on the proportion of sharing because some respondents claimed that the sharing would be even as the landlords insists that they should take a bigger share. 12 respondents agreed with *busuulu* payment if only the amount could be increased and paid seasonally based on the harvest realized or the activity being done in the land. 13 respondents decided that *busuulu* has lost meaning and must be completely scrapped off because it deprives the landlords of the use of their land.

The researcher therefore learnt that in the circumstances that the *busuulu* is to be maintained, then the amount of money involved and terms of payment must be revised in order to motivate the landowner and also to enable the tenants to work hard to buy off their tenancy into land. This is believed would create a remedy for the frequent land dispute and its subsequent destruction to properties.

4.16. Duration of Time to Claim For *Kibanja*

The statistics gathered pointed at 1-5 years, 6-10 years, 11-15, 16-20 and 21 years up to indefinite periods of time as the duration of time for re-claiming of ownership of *kibanja* after leaving it un attended to. This was by 5, 11, 7, 16 and 26 respondents respectively.

This has been summarized as tabulated below;

Table 8: Showing Respondents' View on Period of Claiming for *Kibanja*

S/No	No. OF PEOPLE	YEARS TO CLAIM
1	5	1-5
2	11	6-10
3	7	11-15
	16	16-20
4	**26**	**PERPETUALLY**

Source: Primary Data 2016

In regard to the above, the study points at perpetual ownership without setting a time frame for claiming for the *kibanja* even when abandoned for a prolonged duration of time. But this is in conflict with the legal standing which allows up to a period of 3 years after which the *kibanja* reverts to the landowner without and future claim. Its true nobody would wish to lose whatever he/she owns but in the circumstance that the *kibanja* is lying idle; the landowner may take it over based on legal grounds. In addition, the law restricts the *kibanja* claim only to the portion where the tenant is cultivating but not the bush land. Therefore if the *kibanja* is left un attended to for long it becomes bushy and could create ground for the landowner to exert claims over it to the dismay of the tenant. The tenants must therefore keep presence and utilize their portions to avoid being mistaken that they have abandoned their *bibanja* to the landlord.

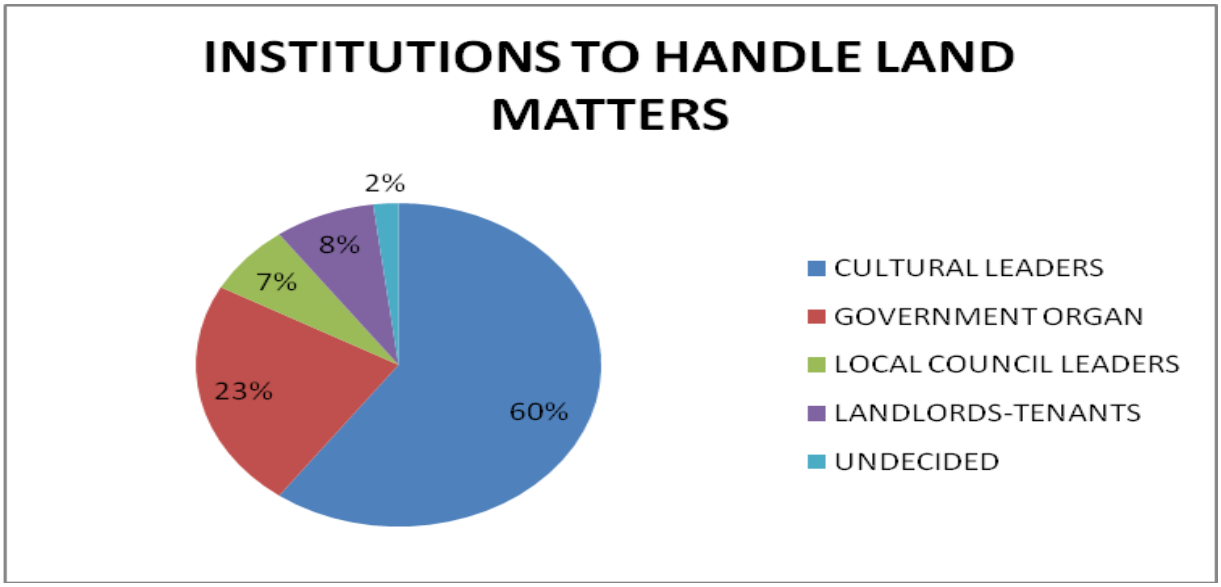
4.17. Institution to Handle Land Matters in Uganda

60% an equivalent of 38 respondents preferred that land matters be left in the hand of cultural leaders most especially the Buganda government through the kingdom representatives (*omutongole)* because it was the system put in place by the colonial powers at the time of formation of land-*kibanja* tenure and it was better prepared in terms of rules and manpower to handle then offer redress to landlord-tenants feud (*Busuulu* and *Enujo* Law of 1928). Out of those mentioned 18 were tenants, 6 were landlords 7 area land committee officials and 7 sub

county chairpersons but they also do agree with other options like court and local council leaders as the next better option. 23% (14) respondents who includes 3 landlords, 5 tenants, 1 Mayor, 3 police officers and 2 area land committee officials, opted that land matters be handled by the central government with its organs like the police and court since their findings and decision is based on well researched/investigated information with the aim of offering equitable justice to the parties in dispute. 7% (4) of the respondents preferred that land matters should devolve to the hands of the local leaders like village committees who were conversant with the local matters where land/*kibanja* was resident and 8% (5) respondents decided that land matters could be amicably handled between the landlords and the tenants since they co-exist and understand each other very well. But incase their negotiation fails, then it must be referred to the local leaders or central government. 2% (2) respondents on the other hand were undecided.

This is laid down as below;

Figure 8: Showing Recommended Institution to Handle Land Matters in Uganda



Source: Primary Data 2016

The above findings and its diagrammatic presentation indicates that local remedy by use of cultural leaders is the most preferred approach in solving the land/*kibanja* feud. Much as the use

of state organs like the police is the second most preferred option but when cultural leaders and local councils are incorporated in mitigating land/*kibanja* matters, it makes home based approach most preferred than legal approach. Therefore the persons in conflict over land/*kibanja* must take the approach of exhausting local remedy before legal methods comes into play. This is geared at maintaining harmony and peace within the community because even if the case proceeds to court, the same witnesses at the village are the ones to be called in court. Court may also decide to descend down to the locus where the portion in dispute or the witnesses are resident. Therefore if you create bad spirit with your community members and or refuse to listen to them, they might not stand by you during the trial for being disobedient to their advice and or approach to the common problem.

However the challenge may arise when the persons in dispute are of different cultural background and the locals wants to save their very own person, then law and other options must be incorporated in the spirit of offering equitable and fair justice.

4.18. What to be Done Before Tenants are Evicted from Land

Investigation expedited by the researcher revealed that the rifts between the tenants and the landlords have always resulted into violent evictions which were accompanied with destruction of settlement, properties and injuries to livestock and at times human death. The Chief Magistrate Luwero suggested that all evictions must be with the orders from court after all options of arbitration and appeal have been expedited and upon all options of mutual settlement have failed. Better still, the person(s) to be evicted should be given a reasonable period of time to re-locate their settlement, crops and other investments. A further period of time was also to be given to the evicted person to recuperate from the untimely displacement which could appropriately take a year. The Police respondents advocated for arbitration between the landowners and the tenants which should be explored with the intention of settling the matter before the law takes over. Even while in court other attempts should be made to seek out of court redress of land/*kibanja* matter by involving the arbitrators and local council leaders and family members. The police officers also recommended that all attempts should be made to verify the eviction documents with the issuing court in order to ascertain its authenticity. 7

tenants decided that in the event that the tenants are to be evicted, adequate compensation which is commensurate with the value of the development put on the land should be offered so as to avoid the stress and fight over the development left in the land by the evicted owners. But 5 landowners differed in opinion by suggesting that incase the development was put with the knowledge that the portion was not belonging to the tenants or was in dispute over claim of right then no compensation should be offered as that would be treated as elements of land grabbing. The Resident Principal State Attorney Luwero who participated in the study as a legal expert proposed that before eviction is executed, prior notice must be given to the evictees so as to enable them re-arrange an alternative place for re settlement. It would also enable them to verify with the relevant stakeholders whether the impending eviction is genuine or framed for personal interest and above all it would enable them to negotiate for more time and or compensation on the development put on the ground. Both tenants and the landowners agreed that eviction should be the last step taken after all other remedies has failed.

The researcher learnt that land eviction was a rudimentary method of getting the tenants out of their *bibanja* upon living in the land for quite a long period of time. Eviction should only be done after all other approaches have failed and should be executed with the decency it deserves without causing destructions to personal property or injuries to the people involved, it must also not affect people or properties not mentioned in the eviction order. But in spite of exploring all options at home and in court, some tenants choose not to leave peacefully and hence eviction would be the only option.

4.19. Community Remedy to Address Land Disputes in Central Region

Based on the feedback retrieved from the respondents, 26 that is 41.3% of respondents agreed that the Area Lands Committee was better placed to offer remedy to land matters since they stay near the land and knows the owners of such lands vis a viz the tenants therein. This was inclusive of 14 tenants, 6 landowners 4 Area Land Committee officials and 2 Local Council leaders. On the other hand 14 (22.2%) respondents proposed that stake holders like village Local Councils, the forum of elders would equally complement the services of Area Land Committee. This opinion was shared by 5 tenants and 3 landowners, 4 local council officials as well as Hal

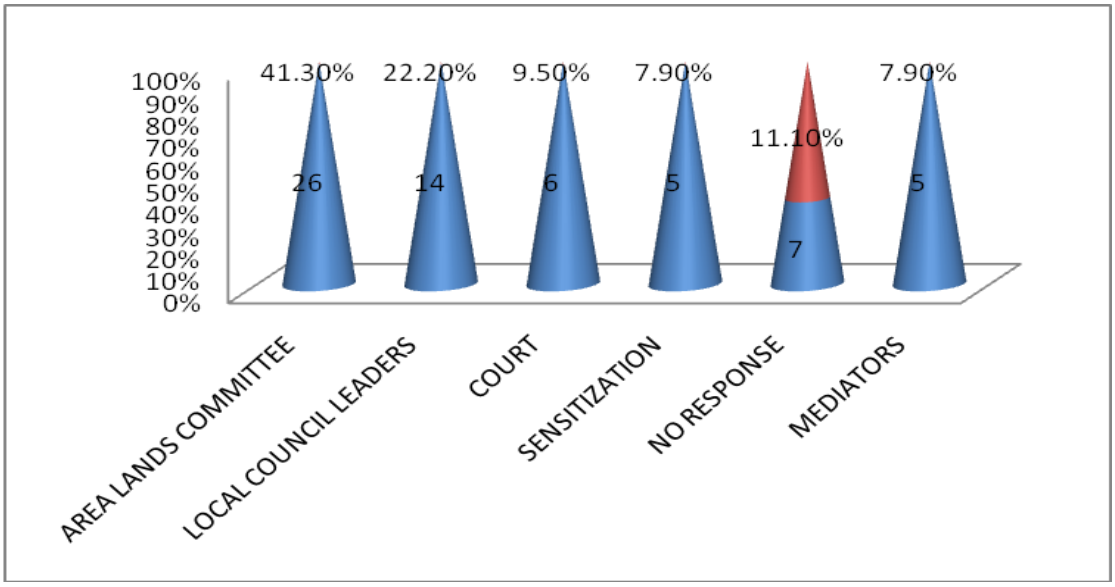
Hajji Nadduli the former district chairman Luwero who insisted that the cultural leaders/representatives of the Buganda government (*omutongole*) would also re-enforce the community leaders in handling matters related to land dispute although at present they mainly deal with the Kabaka's land. Additionally, the opinion leaders and arbitrators were cited as more suited to offer community redress to land-tenants dispute as well as between landlords themselves and between tenants themselves since they aim at restoring harmony and peace and not apportioning blames. In the event that these stakeholders fail to bring sanity or harmony then matters were to be referred to court. 6 (9.5%) respondents from law enforcement agencies like police, court and the officials from the Directorate of Public Prosecution unanimously agreed that in spite of the local approaches; court should not be exonerated from being employed to offer legal remedy in land/*kibanja* dispute. The Chief Magistrate asserted that

"the role of court is not only to prosecute but also to advise and guide on legal matters, land-kibanja inclusive".

5 respondents proposed that since the public still lacks knowledge of the law relating to land and *kibanja*, increased sensitization must be done in order to create awareness and empower them to know then offer appropriate remedy on land/*kibanja* disputes this equates to 7.9% response. 7 respondents restrained themselves from contributing towards this study question for reasons best known to them and this was 11.1% non response. 5 respondents proposed that arbitrators should be incorporated to handle land-kibanja matters in the community. This was equivalent of 7.9% of the respondents.

The graph below can is indicative of the above data;

Figure 9: Showing Community Remedy to Address Land/*Kibanja* Dispute



Source: Primary Data 2016

The response enabled the researcher to learn that most people are in support of local remedies to handle land matters more especially the role of the Area Lands Committee and Local Council leaders. But it must be noted that the Area Lands Committee are composed of people with little or no knowledge in land laws and are poorly facilitated to do their work. Therefore there is need to train and facilitate these committees so as to keep them abrased with the changing trends in handling land matters and also to avoid the temptations of being compromised by those who wants to fraudulently deprive others of their land/*kibanja*. Local arbitrators should also be incorporated as advisors in some areas which needs settling public sentiments and to offer technical advice in creating harmony between the persons in dispute.

4.20. Introduction Of Certificate Of Occupancy (CO)

Certificate of Occupancy was introduced to act as a document of acknowledgement of tenancy. 30 respondents which equals to 47.6% of the respondents said that they had not seen the certificate of occupancy. They further asserted that they were not even aware of the existence of

the said certificate of occupancy but admitted that if brought to their attention, they would look into the validity of using the said document then make a concrete decision. 16 respondents which represented 25.4% respondents who were landlords stated that they had heard of the certificate of occupancy but had not seen it nor issued it at all. They also added that they would not accept it since they were already using *busuulu* receipts which were more credible and reliable to them. Only 2 respondents (3.2%) who were landlords admitted to have seen and accepted the certificate of occupancy as an acknowledgement of tenancy on the strength that since this was from the government it was more authentic than the *busuulu* receipts which any person could design and issue even without a genuine claim of ownership. Only 5 (7.9%) respondents who were tenants admitted having heard of the C.O but possible attempt to persuade their landlords to issue and acknowledge it faced resistance since the landlords refused and preferred to recognize *busuulu* tickets than C.O. The rest of the respondents that is 10 in number equivalent to 15.9% both landlords and *bibanja* owners expressed no knowledge of the certificate of occupancy and were reserved to express their opinion on whether they would accept its use as document of proof of *kibanja* ownership in the land.

The researcher then deduced that much as the certificate of occupancy was well intentioned by the government, there were minimal step taken to create the awareness in the minds of the public about its usefulness and applicability in the land-*kibanja* world that was why most respondents were not aware of its use and existence. Therefore for it to be accepted and applied, sensitization and re-orientation should be done so as to inform the landowners and the tenants about its contents and its usefulness compared to the usual *busuulu* tickets and the land titles.

4.21. Challenges Faced by Police Officers in Handling Land Matters in Central Region

25 out of 44 (56.9%) respondents which includes 8 local council leaders, 7 tenants, 4 landlords, 1 arbitrator, 2 court officials including 3 police officers themselves agreed that police officers have little knowledge in handling *mailo* land disputes since majority of them come from outside Buganda where land tenure is non *mailo*. This made them to find hardships in differentiating between a tenant and a landlord or even separating between a bonafide occupants from a legal occupant.

In addition the Resident Principal Sate Attorney Luwero agreed that police officers were faced with the problem of obeying court orders for eviction and political orders of staying the eviction pending other remedies. The challenge of verifying court orders which were at times forged and presented to them for execution yet in the actual sense it would not be from court, was also cited. The District Police Commander Luwero when contacted on the subject asserted that police have been torn by conflicting orders from court as at times the same court may give orders to execute eviction to the plaintiff and the orders to halt the eviction to the respondent on the same land. Relatedly the study revealed that at times the plaintiff could decide to seek an order from land division court as the respondents seeks for another order from family division court over the same land. This made police to be blamed most times for executing wrongful orders and at times for staying the eviction pending consultation and verification of documents.

Superior-subordinate orders have also been seen as affecting police in enforcing and addressing matters on land due to the attitude of obeying unquestionable orders even when it appears unlawful, the so called "orders from above". This made some police officers to execute orders which ended up escalating fights between tenants and landlords. According to George Opio the in charge Land Protection Police Office-Luwero,

"orders from above have always brought divided loyalty where the police would choose between respecting the court orders and or the orders of their supervisors on the same matter".

Worse of all land matters have been seen as purely civil and hence police had been referring these matters to court. With the introduction of Land Protection Police Unit, very few police officers were trained in handling land matters; the few who were trained were also absorbed into other police units due to transfers and deployments without replacement or replaced with those not inducted in handling land matters. This made the officers of land protection to display little knowledge and awkward skills in handling land matters. Mr Jjagwe Raymond the District Criminal Investigation Officer-Luwero lamented that

"*police investigators have little knowledge in land matters especially mailo land with tenants. This makes them take unrefined decisions and or hurry to apprehend and prosecute people in a*

matter which could have otherwise been settled through mitigation". He concluded that police *"investigators are constantly being transferred from one part of the country to another and therefore cannot conceptualize and comprehend mailo land tenure system well for ease of offering appropriate legal redress".*

12 (27.3%) tenants blamed police for conspiring with the rich landowners to chase them away from their land and so police executes some orders in a hurry without verifying the authenticity of such eviction orders therefore when it is proved that the eviction was illegal, the police officers are held individually responsible for the mess since they were part of the team. 7 (15.9%) landlords interviewed responded that the police officers were faced with the challenges of resistance from the public when they go to witness eviction; they added that police officers are purely dependent on the input from the person applying for eviction as they are not facilitated to perform such exercise. This opinion was confirmed by Jjagwe Raymond the district CID officer Luwero.

From the study, the researcher learnt that police officers have played a commendable job in limiting destructions brought about by land/*kibanja* disputes. They have also tried to sensitize the public on the dangers of taking the laws in their own hands through community policing exercise and *barazzas* dialogue. But the biggest challenge realized from police was that they were highly under facilitated to peruse matters related to land/*kibanja* as most of them were treated to be civil and their follow up not provided for in the police budget.

Truth be told it was established that some police officers were corrupt and are easily compromised by landlords who offers them little gratifications to enable them fulfill their ill gotten interest of victimizing the tenants in a land dispute and at times forcing them out through eviction or arrests. But conflicting loyalty based on different orders issued by superiors also leaves the subordinate officers at a crossroad on whose order to obey and which one to ignore. The same applies to court where orders issued by the subordinate court are reversed or halted by the superior court on the same case. However looking at the hierarchy of court and the officer issuing the order, the subordinate officer is to obey the orders of the higher court and or that of the higher ranking officer. The response of the police officers should be geared at offering equitable and objective justice which must portray police institution as professional and pro-

people.

4.22. Opinion on Laws Relating to Sale of Land by Tenant

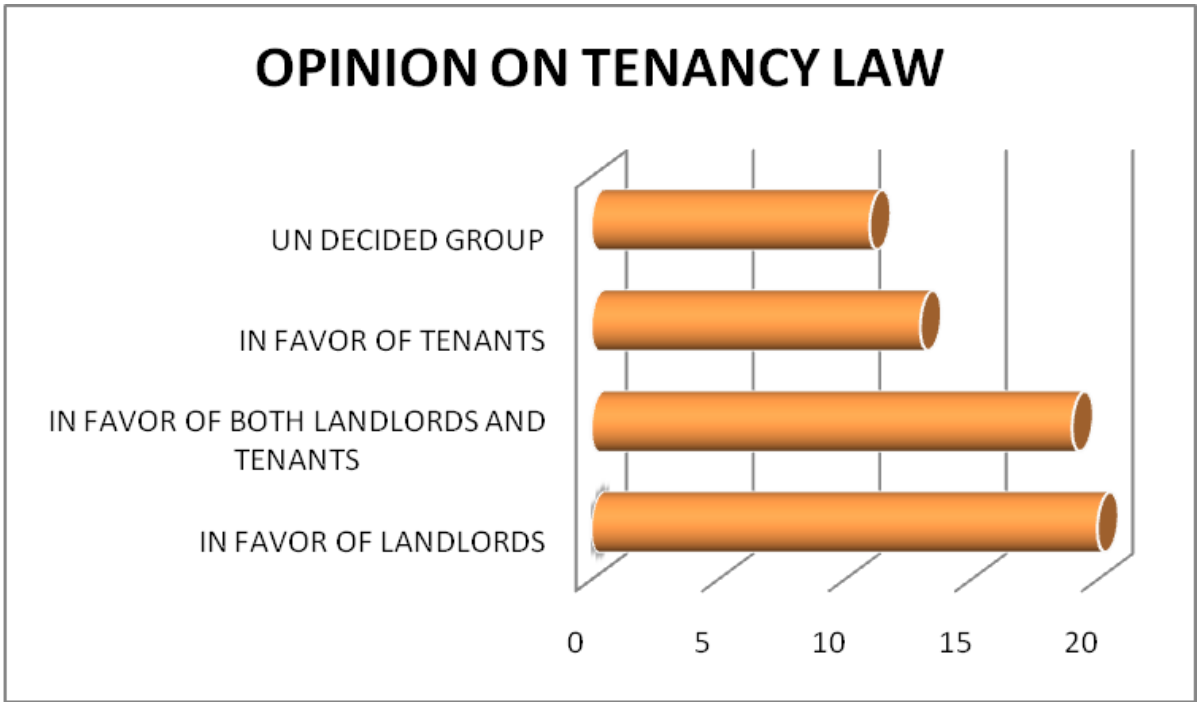
Pertaining article 35 (i) (a) of the Land Amendment Act 2010 regarding the sale of *kibanja* by the tenants without giving priority or notice to the landlords, the respondents interviewed asserted that the intention was good and it protected the landlords as persons with legal interest over the land and merely advocated for recognition of the tenant by the landlord. But tenants on their part lamented that this law benefited the landlords more than them because in the event that the landlord has denied the tenant rights to sell *kibanja* and yet the landlord would not be having ready cash to buy off the same *kibanja* from the tenant, then this would erupt conflict of interest and hence cause dispute. This would be worse when the tenant was not known to the land owner or his tenancy was questionable. Land owners on the other side were arguing that the tenants were selling *bibanja* beyond their portion of occupancy. Even where they sell the portion they occupy, the tenants failed to introduce such buyers to the landlord thereby making such buyers to be termed trespassers even when they injected their hard earned resources in acquiring the portions which they would easily forfeit to the landlord.

This argument between the landlords and the tenants were compounded by the fact that incase the landlord sells the land without informing or giving priority to the sitting tenant, his only role would be to introduce the new buyer to the tenants. He would also be restrained by law from evicting the tenants except by an order from court.

Statistically, a total of 63 respondents were contacted on this subject through interviews and questionnaires and their responses were as follows, 20 (31.7%) accepted that the law is in favor of the landlords, 19 (30.2%) admitted that law protects both the landlord and the tenants as 13 (20.6%) replied that the law favors *bibanja* holders. 11 (17.5%) respondents had no opinion to display.

The diagram below represents the opinion on laws relating to the lands use in central region.

Figure 10: Showing Opinion on Laws Relating to the Sale of Land in Central Region



Source: Primary Data 2016

The researcher found the law inappropriate and inequitable because incase the tenant sells the *kibanja* without giving first option to the landlord, the tenant suffered more punishment of paying 96 currency points, 4 years imprisonment or both and the transaction declared void but worse of all the tenant is to forfeit right of tenancy and the *kibanja* to revert back to the owners but the landlord is only to pay a fine of 96 currency points and or suffer 4 years imprisonment or both incase he/she evicts the tenant from the land. But for the landlord who sells without informing or giving first priority to the tenant his only task would be to introduce the new buyer to the tenants who must be cognizant of the said tenants and there is no fine attached to them, yet the same law book asserts that each party should give each other first priority during the sale before engaging the outside people. This could probably be why respondents attested that the said law is geared at protecting the interest of the landowners than that of the tenants.

But all in all both tenants and landlords agreed that the law could be maintained as it protects both parties' interest and it promotes harmonious co-existence as well as recognition of one by the other.

4.23. Advice to the Commissioner Of Land

The study noted from 28 interviewees especially the Registrar of Titles Bukalasa that the commissioner land registration should make the registration process transparent and to be reviewed yearly to ascertain its effectiveness. This should be through incorporating the services of the Area Lands Committee at the village level for ease of knowing actual ownership of land and the changes that might have taken place therein in regards to ownership. This implies that all land transactions should be brought to the attention of the local leaders and records of transaction kept by the buyer, seller and the local leaders for future references in case of dispute. This opinion was shared by other 5 respondents and the incharge Land Protection Police Luwero who added that involving many stakeholders in the land transaction would create provision for accountability and protection of the interest of the tenants in such land because not all of them can be compromised at the expense of their tenants.

The Resident Principal State Attorney proposed that the commissioner of lands should introduce a policy aimed at phasing out the *kibanja* ownership by gradually allowing tenants to buy off their portions into land. She added that a period of 20 years should be given to the tenants to occupy and utilize the land after which they would automatically transform into landlords and the government would process for them the land titles. But the officer incharge investigation at Luwero Police Station insisted that the options stipulated in the lands Act should be maintained since land is inelastic. The officer also insist that the commissioner should limit the size of land to not more than 25 acres in rural areas for ease of ensuring that all people gets space for settlement and development. Much as this opinion was welcome by 6 landlords, but they disagreed with the opinion of Resident Principal State Attorney on the time frame of 20 years as they assert is a very long period of time of implementation and they opted for immediate redress.

In addition to the above, 5 respondents agreed that land officers at all levels were not doing their best to execute their duties in a transparent and professional manner as they were most times

compromised with gratifications in order to register land without producing the requisite documents and or registering land which did not belong to the applicant, therefore commissioner of land should put punitive measures to combat such practices by its staffs. Those who could not perform professionally and diligently should be removed and replaced with competent and trustworthy officials. 9 tenants on the other hand asserted that they should be given time to purchase their portions into land but the time period should be reasonable and the amount manageable since they are already sitting on the land and not new entrants who should be subjected to new conditions. But they also proposed that the commissioner land registration should help them with survey so as to reduce the cost and burden of determining the size of their portions during the survey since *bibanja* has not clearly determined size in terms of measurement and that private surveyors at times under declare the sizes of their portions in favor of the landlords who are most times their funders.

Land protection police officers proposed that land dealers should be registered as a corporate body with a known location and contact. Their offices should be made known to the land commission and other relevant stakeholders for ease of eliminating fraudulent land dealers who would want to defraud land sellers of their land and leaves them landless. It would also make it easy to follow up such crafty land brokers incase such a firm is reported to have been involved in the land scam.

The researcher therefore established through the study that the Commissioner Land Registration has a big role to play in the registration process which at present only looks at protecting the interest of the landowners and not the tenants. It is also prudent to involve the local leaders in the land survey and registration process so as to build a linkage and cooperation with the people who lives at the local area and are conversant with the ownership of the land. This would reduce fraud in acquisition and registration of land and would also help in protecting the interest of the tenants who are being treated as not concerned with the registration process yet affected while the exercise is going on in terms of destruction of crops as well as parceling of *kibanja* into different lands. But the researcher also noted that any policy or changes in land management should be channeled to the parliament through the line ministries for ease of coming out with a

clear guideline for implementation, so a lot of expectations should not be put on the commissioner alone but the entire stakeholders should be consulted and incorporated.

4.24. Advice to Government in Fighting *Mailo* Land Disputes

31 respondents contributed to this subject and their responses were as follows;

8 respondents a representation of 25.8% respondents interviewed offered to the government the advice that land committees handling land matters should be established and the subsequent hierarchies beginning from the village up to the national level for ease of coordination and referral also be established.

8 (25.8%) respondents suggested that all tenants should be registered according to the sizes of *kibanja* they hold and the land they belong to not forgetting the time they have spent in the land. This could be helpful in mitigating compensation and relocation in case the land owner wants to compensate and relocate the tenant to another place so as to create space for un inhibited development.

6 equivalent to 19.4% respondents proposed that government should establish and strengthen lower courts to handle land matter so as to avoid case backlog of land matters in the Chief Magistrate and High courts. The Chief Magistrate added that the district Land Boards should also be mandated to handle matters originating from *mailo* land other than that of public land only.

9 (29.0%) respondents proposed that *mailo* land which is filled with tenants should be bought off by the government then given to the tenants because by having many tenants which the landowner cannot do away with, the land becomes less useful to the owner and so the best remedy would be for the government to buy it off then give to the tenants who would be tasked to remit back the government money in installment. This would eliminate land disputes since all matters related to such wrangles would be addressed by the government itself and immediate redress offered to such allegation.

The researcher agreed with the respondents on the assertions that *mailo* land with too many tenants be paid off by the government then given to the tenants. Under the land fund, these

tenants would then be tasked to secure some loan then remit the government money back into the treasury so that they retain their portions of land with its land title where there would be no encumbrance from any third party. But the government should also put interest in liaising with the land owners to know the numbers of people occupying their land and the terms and conditions of occupancy for ease of avoiding encroachers and illegal claimants who are fond of sparking conflicts. Land registration should also be done with the involvement of the local leaders so as to eliminate fraudulent land registration at the peril of the legitimate owners.

This has been summerised as tabulated below

Table 9: Showing Advice of Respondents to Government

S/No	ADVICE	No. OF RESPONDENTS	PERCENTAGE
1	Create Lands Committees from Village to National Government Heirrarchies	8	25.8
2	Registration of Tenants by Lands	8	25.8
3	Lower Courts to Handle Land Cases	6	19.4
4	Government to Buy Mailo Land for Tenants	9	29.0
TOTAL		**31**	**100**

Source: Primary Data

4.25. Why Court Issues Several Letters of Administration

In this study, 28 respondents participated and their responses were as follows; 14 respondents equivalent to 50% respondents interviewed revealed that court have got poor record keeping that made them to issue several letters of Administration to the claimants of the deceased properties as the administrators. These generated conflicts because even unscrupulous people conspire with court officials then obtain letters of administration without having any relations or connection

with the deceased. Worse still the respondents admitted that court have never taken trouble to probe into the sources of documents submitted to them before issuing the said letters. But it would only turn around to pronounce a verdict to such anomaly when it's investigated and brought for hearing.

The Chief Magistrate Luwero clarified that Letters of Administration are issued based on the applications made endorsed by the family members and the Local Council officials and it's not only for the deceased land/*kibanja* but for the whole assets left by the deceased. Therefore court acts based on documents submitted incase no objection is brought up to challenge the application submitted. But he also agreed that some court officials out of ill interest may conspire with the applicants to obtain letters of administration even after it was already issued to another person.

10 respondents equivalent to 35.7% suggested that letters of administration must be tendered in by family members in liaison with the local authorities and clan members who would be held culpable incase its found later that they conspired to dupe the true beneficiaries of their departed relatives' assets. Infact family members should not be limited only to choosing the administrators but should also be tasked to tender the proof documents through the clan elders who are presumed to be cognizant of the importance of preserving the family properties and lineage.

The Resident Principal State Attorney (RPSA) Luwero Ms. Nabasitu Daisy proposed that there should be configuration of court data system with that of other government organs such as Land Commission, Uganda Revenue Authority, and the Administrator General for ease of sharing and comparison of data so as to avoid issuing of Letters of Administration to illegitimate claimants. She also added that some applicants under declare the value of the deceased land thereby making lower court to issue orders which could have otherwise been issued by a higher court. High court normally demands for letters of no objection from the office of the Administrator General which some applicants find it cumbersome and time consuming to obtain. The RPSA therefore proposed that in spite of configuring the data system, court officials needs to be vigilant on the document they receive before issuing out letters of Administration and they must

also adopt the data computerization system so as to avoid duplication of documents which were already earlier issued.

2 (7.1%) respondents noted that the publication for Letters of Administration is done on news papers of one's choice and the space utilized is normally too small, worse of all very few people put interest in reading such publications but when they realize that a letter of Administration has been issued, they start challenging and processing another one for the same estate hence causing issuance of multiple Letters of Administration.

2 respondents representing 7.1% also lamented that ignorance of the applicants for letters of Administration make them to use third party agents to speed up the process. Some of these agents are court officials who help the applicants to prepare legal documents for the application of letters of administration and later play a tremendous role in preparing the same.

The researcher then found out that the issue of letters of Administration issued by court cannot only be blamed on court alone since the applicants also conceal some information say by under declaring the value of the land which could have helped court in reaching a decision. The aspect of publication in the gazette for letters of Administration also needs to be regulated because some applicant with the intention of avoiding being challenged may opt to publish in the paper which is least read by the people of his area or written in the language not read and spoken by his people. To further reduce multiple issuance of Letters of Administration, court should computerize their data system and then share it with other sister institutions for ease of avoiding duplication of documents. Persons found to be involved in such illegal practices to be penalized in the courts of law. Court process servers should also be empowered to follow up the documents submitted by going to the locality where the estate is located to verify the information and particulars of persons inscribed in the application for letter of Administration.

This can be summerised has hereunder;

Table 10: Showing Why Court Issue Several Letters of Administration

S/No.	REASONS	NUMNER OF RESPONDENS	PERCENTAGE
1	Poor Court Records	14	50
2	Family Negligence	10	35.7
3	Unregulated Publication	2	7.1
4	Court Agents	2	7.1
TOTAL		**28**	**100**

Source: Primary Data 2016

4.26. Opinion on how Court Handles Land Matters

18 respondents contributed towards this question during the interview and their opinion were as enumerated here; 5 respondents interviewed recognized the effort of court in offering redress to land matters and that it had helped to dig the rot in land cases by conducting hearings and offering appropriate remedies like compensation, restitution, imprisonment or both. This was equitable to 27.8% of the respondents interviewed.

However, 8 (44.4%) respondents upon interview have equally pointed that court spent too much time in hearing land matters before reaching a verdict. This most times created opportunity for the aggrieved parties to lose patience and resort to illegal means such as confrontations, malicious damages to property in the land, forcible entry into land and unlawful eviction of tenants from the land as well as killing one another due to emotional attacks.

3 respondents that represented 16.7% of respondents blamed court for issuing eviction orders before appeal procedures are exhausted and that court sometimes issue eviction orders on unclear defined portion especially in cases involving *kibanja*. This makes it difficult for the executors of the order to know where to begin and where to end.

But 2 making 11.1% of respondents from the judiciary especially the Chief Magistrate Luwero asserted that court operates through a guideline as stipulated in the Magistrates Code Act. This was because matters reported to court attract different modes of redress. The main aim of court was to listen to both parties, call for relevant documents and witnesses then pronounce its decision based on its findings. Better still, court also aim at reconciling the parties in dispute by giving them ample time to seek out of court settlement of the problem and rejuvenate social harmony. This however did not rule out the fact that some court officials were being compromised and influenced to take decision based on the gratifications received and not on the evidence adduced. This made them to take long in taking decision and or force the conflicting parties to reconcile and settle their matters out of court. The inability to offer immediate solution to the burning matter made the aggrieved person(s) to seek for alternative approach which would amount to an escalation of conflict.

To the researcher court has a mandate to listen and offer a verdict to every allegations brought before it. Court is also expected to guide and arbitrate the parties in dispute through the involvement of the arbitrators and or tribunals. The long court procedure is probably to give the parties in conflict time to reconcile then restore normal relationship among them. Disputes should not lead to breaking of the law or any other form of incivility. Court is also burdened with a lot of workload and yet has very few magistrates to clear the case backlogs. Therefore the government should increase the number of magistrates to expeditiously handle the increasing land cases in lower courts. Some complainants and plaintiffs who has genuine claims but cannot meet legal fees should be handled at the cost of the state so as to avoid the usual cry that court is for the rich and able bodied not the poor and vulnerable. In passing judgment in land cases, the interest of the tenants must also be protected and preserved.

4.27. The Long and Costly Land Titling Process

11 (39.3%) respondents especially the land owners reported that acquiring land title was a laborious process right from the point of getting a surveyor to parceling the land and have it demarcated, submitting the relevant documents to the land offices and the eventual outcome of the land title. However, the District Staff Surveyor Mr. Serwambala Ivan differed in opinion in

that the government only charges 1.5% of the value of land as per the valuation report from the government valuer. The land owner then pays such amount of money in the government treasury. The survey was said to be a private arrangement between the land owner and the surveyor of his choice and the cost involved was negotiable. However, these surveyors charged exorbitant costs as the government has no defined charge of survey. Besides, the land dealers in their quest to gain from any transaction would exaggerate the amount so as to make a difference.

4 out of the 11 respondents earlier contacted pointed out that the registrars also conspire with the surveyors who submit survey reports for eventual registration of land by levying un accounted fees hence making the cost of survey to go higher than usual. This made the rich land dealers to exploit the ignorance and poverty of some land owners by having their land registered fraudulently or part of their land to be curved off as compensation for the cost of survey. At times more portion than agreed upon is parceled leaving the land owner with little share. This has been responsible for the land disputes between the land owners and the land officials as well as between the landowners and the tenants who wants to buy off their *kibanja* into land because the tenants would either give up on the process citing the hefty costs involved or lose more. Some forfeit some portions of their *kibanja* to compensate the cost of processing the land title. Some choose to remain tenants for good to avoid going through all these hurdles and costs.

15 i.e 53.6% respondents submitted that they had to share part of their *bibanja* with the land owner who signed for them transfer for the remaining portion, they suffered further shortage as the surveyors ended up taking part of the remaining portions as compensation for the costs of survey and processing the land title. Other tenants ended by giving up on the process of transforming into landlords due to the small portion of land they would retain. They chose to remain as *bibanja* holders to the discontent of the landlord. This sparks conflicts because the landowner soon after reaching agreement, taking possession of the forfeited portion may end up selling or developing it but when the tenant revoke the idea of sharing, it becomes difficult to reclaim the portion given to the landlord.

2 computed as 7.1% of respondents including the Registrar of Titles-Bukalasa Ms. Nabukeera Madinah when contacted responded that land registration is a requirement from every landowner

but at present the exercise is still voluntary and that Land Titles currently are treated as the only documentary proof of ownership of land. But since the office of the registrar is not mandated to probe into the process of acquisition of land, the registrar is only to register the land based on the required government documents presented. But if its discovered later that the land title issued was fraudulently processed, the registrar is mandated to recall and cancel the said title under article 91(1)(e) of the Land Amendment Act 2010. The registrar however refuted the allegation of conspiring with the middlemen in inflating the costs of land registration because the government has clearly laid down guidelines and costs of land registration and any deviation from it is ultra vires. She concluded that the current land registration guidelines have no provision for the tenants since the registrars register land not *bibanja*.

Based on the blame apportioned to the land registrars, surveyors and land dealers for the high cost of processing land titles which have contributed to the escalation of *mailo* land disputes in the central region, the researcher learnt that determination of the value of land by the valuer who at times are represented by the private surveyor ends up cheating landowners because land value and price differ from one location to another. The study also reveals that the middlemen are responsible for the high costs of registration since they don't have a fixed charge for a specific size of land but rather it depends on the bargaining power of the applicant. But since there are surveyors employed and deployed at land offices, the government should use their services to reduce the costs of survey brought by the private surveyors and to get a proper value of the land as per government guideline. A time frame should also be set for the applicant for the title to get his/her title from the date of tendering the required documents so as to avoid unnecessary delays and extortion of money from the applicants in the names of following the title with the land office.

4.28. The Appropriate Size of *Kibanja* in Rural and Urban Area

A total of 28 interviewees participated in this study question. The Al Hajji Naduli a former district chairman and a landlord proposed that land and *kibanja* ownership could not be restricted in any way because people have different abilities to acquire land and or *kibanja*. What is important is the legitimacy of the claimants. This opinion was shared by Ms. Nabasitu Daisy

the RPSA Luwero who stated that

"it would be unrealistic for the size of land or kibanja to be limited because it would deter other potential developers to expand their development on land/kibanja which development would benefit other people in forms of employment".

However, 13 respondents argued that due to the increasing population which is threatening the capacity of land to accommodate everyone, the size of land/*kibanja* should be limited in urban and rural areas. This was seconded by Mr Jjagwe Raymond a legal expert and the district chief investigator for Luwero. However, 12 tenants who spoke on this subject had common opinion with that of Al Hajji Naduli and Ms. Nabasitu Daisy by emphasizing that since *kibanja* sits on the land, it would be unrealistic to limit the size of *kibanja* as if its land itself with a defined surveyed boundaries. They proposed that setting limit to the size of *kibanja* would interfere with negotiations especially when it comes to sharing of *kibanja* into land as that is the only time interval when *kibanja* is measured in the survey and mutated into land.

But fairly speaking it should be accepted that some people are endowed with resources which can enable them to purchase the entire sub county even where people are settled in and are earning their living therein, so such people should be protected and also supported in getting places for settlement. This has made some respondents to casually assert that in rural areas land ownership should be limited to at least 25 acres and urban areas to at least 2 acres. Then for *kibanja* tenure, the size is suggested to be at least 15 acres and in urban areas to at least a plot which I find realistic for any settlement and development. In addition, since the law limits the tenants only to the portions they are cultivating, then the landlord is left with the rest of portions to cultivate, sell or sublet it to any other beneficiaries without inconveniencing the tenants just in case the size of the land could accommodate both of them.

4.29. Should Government Regulate Land Price?

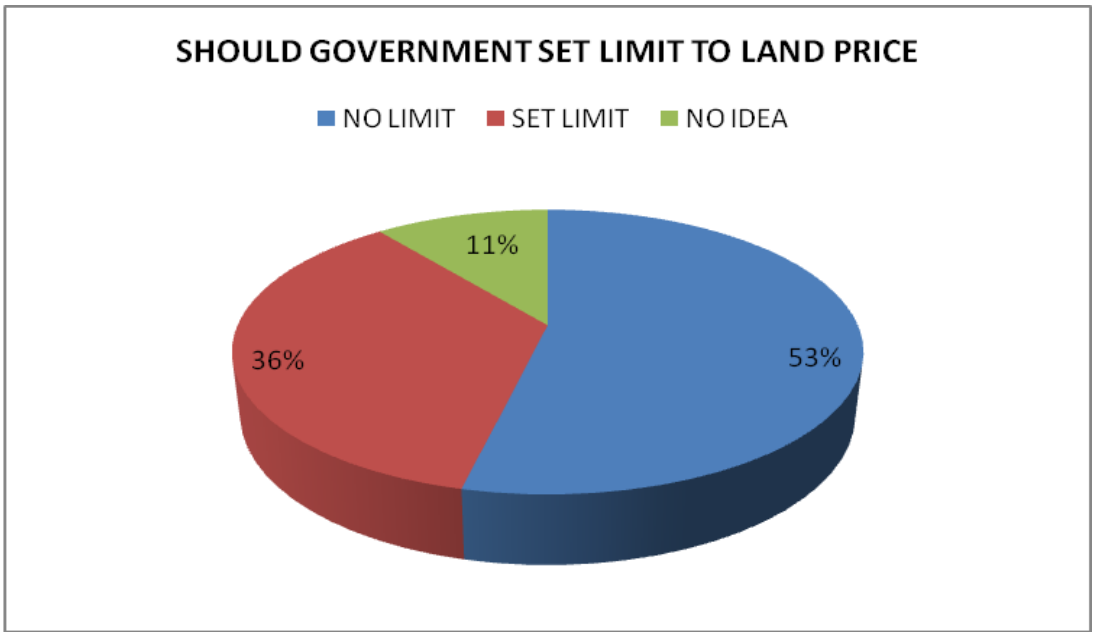
28 respondents interviewed expressed mixed opinion on this subject of setting the price of land/*kibanja*. 15 respondents responded that Uganda is a free market economy and when it came to the sale of land and *kibanja* just like any other commodity, the government could not throw its

weight on the dealers or buyers and sellers. More so the price and value of currency keeps on fluctuating as that of land keeps on appreciating and not depreciating. Therefore the respondents proposed that the government should stay away from setting prices for land and *bibanja*. *"It's unrealistic for the government to set price for land or kibanja since Uganda is a free market economy where goods are sold on the willing buyer-willing seller basis"* says Mayor Luwero town council. These views represent the opinion of 53.6% of the interviewed respondents.

But 10 equated to 35.7% of the respondents also noted that in the land transaction, some sellers were too ignorant and have weak bargaining power to negotiate for a better price from the buyer. Worse still the middlemen in the land deal normally dupe them by taking more money and leaving the seller with a meager amount. So they proposed that the government should come in to protect such categories of people by setting a limit to the size of land. In so doing the government may also tap revenue from such sellers and buyers hence increasing government revenue base. Above all transaction which passes through the hands of the government is accompanied with documentations and authentication which may be deterrence to fraudulent sales and can act as documentary evidence in legal proceedings in the courts of law. 3 (10.7%) respondents did not give their opinion on this subject saying land transaction involved prominent people in the government and determining the price or not setting the price is none of their concern.

This has been diagrammatically presented as below;

Figure 11: Showing Opinion of Respondents on Land Transaction



Source: Primary Data 2016

From the researcher's point of view, land market has been highly liberalized and yet the amount of money involved in it is too big. It's therefore clear that much as the market economy is liberalized, some vendors are too ignorant to bargain for a fair price for their portions of land. This makes them susceptible to being cheated by the middlemen or fraudulent dealers. Therefore it would be prudent for the government to come up and safeguard them from being taken for granted by being cheated or defrauded.

4.30. The Role of the Mediators in Settlement of Land Disputes

Report retrieved from the 28 respondents interviewed were as follows; 15 (53.8%) respondents agreed with the service of the mediators and knew of their existence, 7 (25%) benefited from the service of the mediators appointed by court in handling their matter, 6 (21.4%) did not know about mediators in handling land matters.

The researchers found out that the mediators are very fundamental in mitigating land/*kibanja* cases and have played a significant role in mitigating land disputes in the central region. This was because these mediators were normally elders who were well acquainted with land demarcations in their localities and are confided in by the local people on issues of restoring harmony among the disputing parties.

Private mediators were found to be more active and visible on the ground that the government mediators who were little known by the disputing parties. According to the officer in charge Land Protection Police-Luwero, the land protection police unit has played the role of mediators in settling land and *bibanja* disputes. But incase mediation failed the police would investigate and refer the matter to court for further legal redress. One mediator interviewed lamented that much as their role has helped is settling many disputes, their input is not appreciated by remunerations but instead treated as voluntary service and unpaid except when handouts are given by the interested party. This could have been why the arbitrators appointed by the district land tribunals and the entire tribunals have disappeared without being dissolved.

4.31. The Effectiveness of the District Land Board in the Management of Dual *Mailo* Land

5 respondents 2 of whom landlords and 3 tenants indicated little knowledge on the roles of the District Land Board in handling *mailo* land.

The researcher learnt from the Chairman Luwero District Land Board that the district land board does not directly engage in the management of *mailo* land disputes but rather refer issues arising from *mailo* land to the Registrar of titles and the District Staff Surveyor (DSS) and to police. Quoting articles 56 and 59 of the Land Act as amended 2010 on the establishment and functions of the District Land Board, the chairman stated that the *mailo* land in not chattered for in their functions.

However, the quest for more information prompted the researcher to apply accidental/convenience sampling procedure which led him to more 8 respondents; 4 tenants and

4 landlords who asserted that the Land Board has not done much in helping them in their land cases. This was an indication that even the respondents were not aware of the clear distinction of the role of the District Land Board and the district land offices within their districts.

The study therefore revealed that sensitization on the roles of the different stakeholders and land officers has been not entrenched into the public for them to know the right offices to seek for specific assistance from. This is coupled with the multiplicity in offices handling land matters; for instance the office of the Resident District Commissioners, the Presidential Taskforce Unit on Land Management, office of the District Chairpersons, police Land Protection Unit, District Land Boards, Non Governmental Organizations interested in land matters and many others. Therefore the government should define the roles of such offices and the extent of their intervention to avoid role confusion and duplication of services.

4.32. Remedies to the Challenges of Dual *Mailo* Land Tenure in Central Region

Based on the response earlier retrieved from the respondents based on the questionnaires answered and interviews conducted and coupled with their opinions on the remedies to dual *mailo* land tenure, the researcher compiled the following views has relevant enough to bring positive progress in settling dual *mailo* ownership in central region;

By advising the tenants to buy off their *bibanja* into to land. 3 police Land Protection officials say this would create a class of land owners and eliminate *kibanja* tenancy which would bring a lasting solution to this landlord-tenant debacle. But one police officer insisted that land/*kibanja* tenancy should remain as it was introduced by the colonialists because the receptors have already embraced how to live with it. This was found untenable as it could not offer remedy to the challenges being sought for.

The only arbitrator interviewed who preferred to remain anonymous advised that in case the tenant could not afford buying off their *bibanja* into land, the tenants were to be advised to share their portions with the landlords and the landlord was to process land title for their tenants before assuming occupancy over the forfeited portion. This was to be effected at the point when the

landlord has handed the title to the tenant fully registered in the tenant's name so as to avoid making agreement which would never come to fruition.

8 respondents proposed that local remedy should not be under estimated as it involves people who would later be called in court incase matters fails at home and so in case they are utilized at the onset it can bring remedy and saves time.

"*Conflicts between the tenants and the landlords should be handled first at the local level through the involvement of the mediators who comprise of competent people in the local areas especially those knowledgeable with the local experience concerning a particular land or those with basic knowledge in land matters. In case the local mediators fail, then government mediators are to step in and try to restore harmony among the disputing parties*" said Hal Hajji Nadduli.

The aim was to avoid escalating local disputes. This would be done with the participation of local council leaders who stayed with the local people near the land in dispute.

The Chief Magistrate Luwero proposed that legal redress should be seen as the last option which could be taken should all other remedies fail. This should be freely and fairly explored for the purpose of promoting public unity and cooperation since land is immovable and keeping people who are not in harmony in close proximity would be more harmful and could cause more bloodshed. This was seconded by the RPSA Luwero who added that court should be involved in legal matters where mutual understanding failed because it gives equitable hearing to both parties before passing a verdict.

3 respondents also proposed that the use of land brokers should be avoided since they were the ones who dupe the land sellers of their money in the names of looking for buyers and later the surveyors for survey and subsequent registration of the land title. This made the land registration process to appear long and expensive whereas not. According to the Registrar of title Luwero, the government only charges 1.5% of the value of land as revenue but the brokers add their own amount at the expense of the sellers. However, he clarifies that survey is not done by the government and so the cost of surveying the land is solely borne by the applicant.

26 of the respondents decided that there should be no time limit to the claim of *kibanja* ownership except that such claimants must be in the occupancy. As far as claiming for the abandoned *kibanja* is concerned, respondents asserted that the *bibanja* holders should exhibit some levels of occupancy in their portions so as to create their presence. This would deter unnecessary claim and illegal eviction. However they should be known to the landlords and should pay the requisite fees for use of land. All in all *kibanja*-land claims must be supported by proof of claim which might be an agreement, land title or settlement in the *kibanja* for a period of 12 years prior to the promulgation 1995 Constitution. This would easen negotiation based on the legitimacy of the tenants and the portion of *kibanja* occupied.

Pertaining the institution eligible for the handling of land matters, 38 out of 63 respondents concurred that cultural institutions would be best placed for offering redress to the alleged disputes. This was to be supported with the input of local leaders and the cooperation of the landlords as well as the tenants. But should it fail legal redress to be perused in court as the last option. On the other hand the Uganda Lands Commission has also been commended as the main institution which could directly manages land issues in the country and also being the one which rent out some land to other sectors of the country. The same Land Commission is also responsible for land registration and hence would be suitable to handle land/*kibanja* matters.

The respondents especially 14 of them further suggested that police especially the Land Protection Unit should be empowered to employ proactive method in approaching and settling land related cases before resort to coercive and legal method so as to promote dispute resolution through dialogue and mitigation. But they restrained police from exercising their powers based on compromises and or orders from above.

In regards to Certificates of Occupancy (C.O), 61 out of 63 respondents did not know or consent to the issuance of the said documents on the strength that the use of *busuulu* ticket had no short comings and has been permitted since time immemorial. More so certificate of occupancy may be mistaken for a land title which may make the land title to lose value and recognition in future. Only 2 respondents who were landlords were aware of the existence and had used the Certificate of Occupancy. It was also realized that the introduction of certificate of occupancy was little

known to the landlords and the tenants which made its effectiveness less significant. However for C.O to serve its intended purpose, the respondents proposed massive sensitization on the importance and value of registering the land and obtaining the said document from the landowner.

The Resident Principal State Attorney, the District Criminal Investigation Officer Luwero and Chief Magistrate have noted that most police officers lack the in-depth knowledge of dualism in *mailo* land which creates provision for the co-existence between the landlord and the tenants. Reasons being that most police officers were picked from different background and not inducted into the modalities of handling land matters especially *mailo* land save for some few police personnels who were given basic training and deployed as land protection police officers. This therefore was not sufficient to offer a logical and appropriate redress to land matters. The respondents therefore proposed that in service training be extended to all police personnels both the investigative wing and those in command position so as to avoid execution of illegitimate orders and also to avoid being compromised by some self seeking individuals. This idea was shared by 25 other respondents.

As for the community remedy to land matters just as in the institutions best suited to handle land/*kibanja* matters, 43 respondents proposed that Area Land Committee and local authorities should be empowered to handle land matters being the persons who were more close to the land and are acquainted with the knowledge of the true ownership. They also proposed that the Buganda government must be allowed to have a stake in handling land matters and offering remedy therefrom so as to avoid these long and expensive court procedures. Alternative Dispute Resolution (ADR) mechanism which can bring solution to the local problems should be taken without resort to court since it's the same local people who would be called to court as witnesses should they fail to settle their matters at home. This opinion was added by Al Hajji Naduli Abdul who highly confided in the role of the local leaders in promoting dispute resolution.

In regards to the current law regarding the land matters especially article 35 (i) (a) of the Land Amendment Act 2010, out of the 63 respondents contacted, 20 respondents more so the tenants laments that the law protects the landlords more than the tenants and hence an avenue for the

landlords to push them out of their *bibanja* using courts and money power. But 19 respondents agreed that the law protects both the tenants and the tenants. 13 respondents stated that the law protects only the tenants but 11 tenants restrained from responding to the questionnaires or interview. The law allows the landlord to sell off his/her land which has the tenants and it tasks the seller to only introduce the new buyer to the tenants who must be cognizant of these buyers. These buyers were also not to evict them except with court orders for a known and justifiable cause. But regarding the tenants, the said law bars the tenants from selling their portions without the consent of the landowner. In case it happens, the tenant stands a fine of 96 currency points, 4 years imprisonment or both. The tenant is also to forfeit the tenancy by the *kibanja* reverting to the landowner.

However, the respondents are cognizant of the fact that the new buyers normally come with stringent conditions and ideas which tenants may fail to comply with thereby brewing up conflict and legal battles. They were therefore advised to transact with the landowner whom they have lived with and knows better before land changes ownership.

The landlords on the other hand upheld the said law as very realistic because it instills in them powers to prevail over their tenants who have become unruly and defiant in respecting their landlords. This conflict of interest was seen as the cause of conflict between the tenants and the landlords. That's why the respondents proposed that local remedies must be resorted to before matters proceeds to court for legal action. The said local approach would help in mitigating both the landlord and the tenant is amicable resolution of their matter without resort to violence which may escalate into destructions of lives or death. Besides the above, land laws were discovered to be obsolete and needs general amendment especially the part which talks about land-*kibanja* sharing which currently asserts that sharing should be based on mutual understanding between the landlord and the tenant without specifying the proportion of sharing and who should process the land title.

Land offices were being blamed for issuing several land titles on the same land. 11 respondents proposed that processing of land titles should be done with the involvement of the local authorities and the cultural leaders in case of family land so as to eliminate illegitimate claimants

and to ease follow up of such cases in the event that it happens. The local leaders were proved to be people who stay close to the community and knew issues within their areas of resort. The clan or family members were the people who were normally consulted on issues relating to family property or the estates of the deceased member. Therefore their opinion would be relevant and binding in the event of rising dispute. The study also indicated that since the land dealers were seen as responsible for increase in multiple land titles issued on the same portion of land, they should be left out from land transactions and only registered dealers used. The office of the registrar should also be having clear records of titles issued and keen to withdraw land titles issued by mistake or based on application for a substitute title then later the mother title is seen.

The researcher learnt that remedy to land/*kibanja* challenges are diverse and multi sectoral as many stakeholders have got a role to play. Therefore to foster a viable remedy, the local leaders, government and the community must fuse effort for better result.

In a nutshell, the study revealed that between the year 2011 and 2015 land disputes involving landlords and the tenants were on the rise in the central region. The report extracted from Luwero Police station Annual Crime Return Form 1 (PF 1) indicated that between the years 2011 and 2015, a total of 1582 land related cases were reported. Out of these cases 48 were from Land Fraud. Obtaining Money by False Pretences from land and *kibanja* transactions were 746, the case of Malicious Damage originating from land disputes were 401 and the cases of Criminal Trespass into land and *kibanja* were 387.

Looking at it in term of years, during the year 2011 a total of 288 cases were reported, in the year 2012, a total of 368 were registered, in the year 2013, the police registered a total of 642 in the year 2014, 72 cases were registered and in the year 2014 a total of 212 cases were registered. With the spirited struggle put by police in combating land fraud, the police managed to reduce the crime rate by the year 2015 except for land fraud which persistently remained high.

The least crime was registered during the year 2014 and this was due to the intensified work of land protection police unit which was detailed to handle land related crimes and to amicably offer remedy to both the landlord and the tenants. This unit was also to investigate and bring the perpetrators of land crime to justice. The land protection police unit worked hand in hand with

other partners like the Local Council officials, the office of the Resident District Commissioners who were the overseers of the security and government programs in their respective areas, lands officials like the registrars of titles, department of surveys and mapping and the judicial officials.

The most commonly registered crimes among others were land fraud, obtaining money by false pretences, malicious damages properties and criminal Trespasses. The researcher picked interest in these cases to form part of this study since they are the most commonly committed offences on land and *bibanja*.

These could be further summerised as cited below;

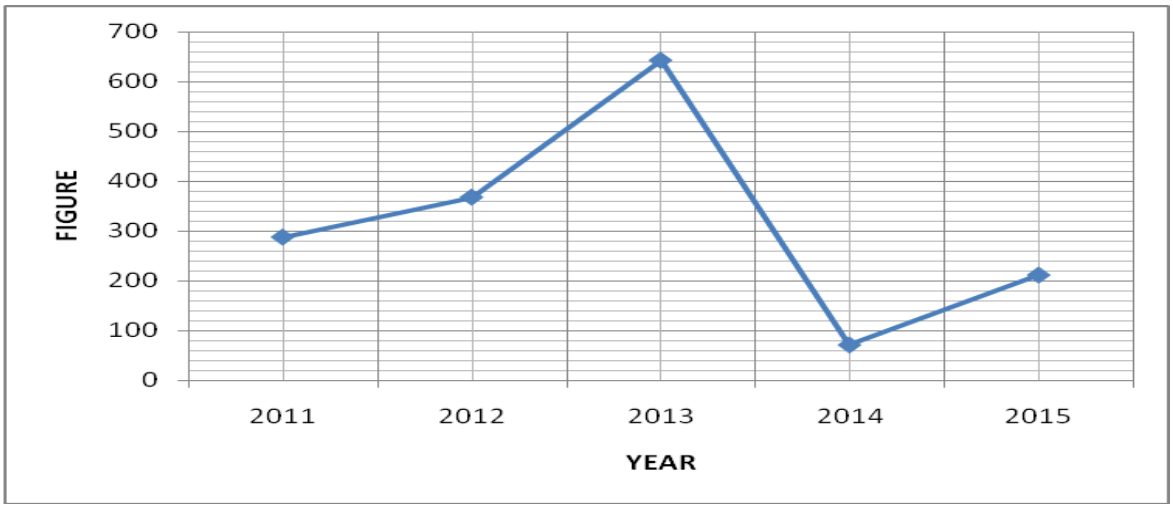
Table 11: Showing Land Crime Rate In Luwero District

S/No	**OFFENCE**	**2011**	**2012**	**2013**	**2014**	**2015**	**TOTAL**
01	LAND FRAUD	7	2	6	13	20	**48**
02	OBTAINING MONEY BY FALSE PRETENCES	124	182	323	25	92	**746**
03	MALICIOUS DAMAGES	77	92	127	14	91	**401**
04	CRIMINAL TRESPASS	80	92	186	20	9	**387**
TOTAL		**288**	**368**	**642**	**72**	**212**	**1582**

Source: Secondary Data From Luwero Police Station PF 1

This can also be presented as below

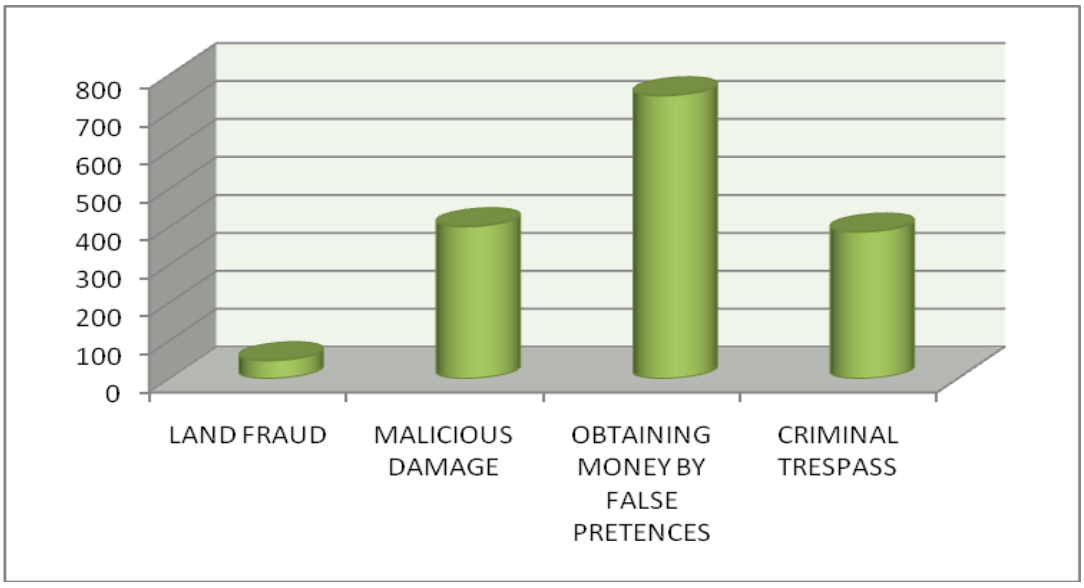
Figure 12: Showing Crime Trend During the Years of Study



Source: Primary Data 2016

As per the specific crime during the study, the table here under can best illustrate the trend and gravity of each crime

Figure 13: Showing Crime Rate During the Study Period



Source: Field data 2016

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.0. Introduction

The overall objective of this study was to trace the genesis of *mailo* land ownership, to investigate how dual *mailo* land tenure has affected the co-existence between the landlords and the tenants and to devise appropriate remedies to the short comings of dual *mailo* land ownership if any with emphasis on the central region of Uganda as the area of study.

5.1.0 Summary of Findings

5.2.1 The Origin of Dual *Mailo* Land Tenure in Central Region

The study found out that the origin of dual *mailo* land was rooted in the 1900 Buganda Agreement in which the signatories where made to believe that it would strengthen the position of the Kabaka and the kingdom but it ended up weakening his position and eventual loss of grip over land. It created a class of land owners who owned land they did not use and the tenants who used land they did not own absolutely.

The study also realized that landlords and elders held better ideas in reciting the stories of the origin of dual *mailo* tenure than the tenants and the technical people. These technical people who were sampled through purposive sampling technique kept referring the researcher to the literatures instead of offering the actual information being sought for.

However, most respondents made reference to the colonialists as the initiators of dual *mailo* land tenure but could not expound on how it was explored. This also signifies that historical informations are not easily retrieved based on the inability of the respondents to quickly recollect their memories when called upon to do so. It could also be attributed to lack of interest in the people to study and conceptualize historical facts but rather focus more on the current events. But it should also be noted that poor reading culture is killing our ability to know historical records.

All in all, the research findings concurred with the respondents' views that the onset of dual *mailo* tenure was solely rooted in the 1900 Buganda Agreement which was signed between the colonial masters and the Buganda leaders thereby reducing the former land owners into tenants and creating a new class of land owners and the tenants.

5.2.2. The Challenges of Dual *Mailo* Land Ownership in the Central Region

The study further revealed that land matters affects many people and sectors not only the persons in conflict. This is evidenced with the common incidences and cases emanating from land/*kibanja* dispute which appears social and legal. These results into destruction of properties and lives, loss of lump sum of money to fraudsters who defraud the land buyers/sellers of their hard earned income. The government also looses on taxes since most land transactions are informally conducted and hence a setback to the economy in terms of revenue base.

In addition several offices have been seen to be intervening in handling land matters some of which are political offices which aims at fulfilling their political interest by wooing more supporters to them and in so doing they make decisions which aims at protecting the tenants which forms the majority of the claimants even if their claim doesn't have merit.

At times the tenants were also blamed for using impunity in fighting the landlords in the course of demanding for their rights although this at some instances came out of uncontrolled emotion and incitement by the self seeking politicians.

The researcher also deduced that the moral and social cohesion which used to exist between the tenants and the landowners have long died probably due to the commercialization of land and the infiltration of the non Bagandans into the *mailo* land in the course of land bonanza. The tenants and the landowners instead of sitting at a round table with the opinion leaders to settle a common problem tends to use coercion and law to settle a social problem.

The study also established that the law regarding land/*kibanja* has a lot of loopholes which needs to be rectified. Law regarding eviction, conversion of *kibanja* into land, sale of land/*kibanja* is wanting. All these escalate conflicts which results into destructions and death.

The law enforcement agents like the police have also been cited to be having limited knowledge

and skills in handling land matters because of lack of in service trainings in handling dual *mailo* land cases. Even where they get court orders, they meet obstacles of execution of such orders due to conflicting instructions that accompanies it.

The study also exposed the challenges poor record keeping of data which in most cases has led to the issuance of multiple letters of Administration and certificate of titles to several applicants for the same estate and hence creating tensions.

5.2.3. Remedies to the Challenges of Dual *Mailo* Land Tenure in the Central Region

Based on the endless battles between the landlords and the tenants, the researcher deduced that social problem should be addressed using community based approach and legal problem be solved based on legal approach and these includes the following;

Local/home made remedies involving local council authorities, area land committees, cultural institutions and the community members would best offer remedies to dual *mailo* land rifts because they live with the disputing persons and knows about the genesis of the matter.

The study also revealed that massive sensitization should be done in order to create awareness on the laws relating to land matters, the importance of land registration, the value of obtaining certificate of occupancy and as well as institutions entrusted with the enforcement of land cases.

The study indicated that the gaps in the laws regulating dual *mailo* tenure must be filled so as to provide appropriate remedy to the legal questions cumbered in dual *mailo* land tenure. Law regarding the size of *kibanja* a tenant is to claim and should be clearly specified in the legal books so as to guide the landlords and the tenants in exerting their claims. But the period of claiming for the *kibanja* should remain perpetual.

The study also proposed that freehold tenure should be adopted and dual mailo tenure be gradually phased off by allowing the tenants to buy their portions into land or by the government buying off such land then giving it to tenants. The government would then recover their money over a prolonged duration of time from the said tenants.

The study also proposed that registration of tenants must be done by the landowners for ease of ascertaining the legitimacy of each tenant and the period of time they have spent in their

respective portions. Even the land dealers are to be registered and their offices or coordinating center with its addresses noted.

Eviction from land should only be by court and after all other options have been explored to its logical conclusion. Court is also to restrain from issuing contradictory or harsh orders which leads to the escalation of conflicts and eventual loss of lives during execution of orders.

5.3. Conclusion

From the assembled evidence and related to the hypothesis earlier raised, the researcher has established that *mailo* land ownership was introduced by the colonial government in 1900. the researcher also proved that dual *mailo* land ownership is cumbered with dual claim between the land owner and the sitting tenants over usufruct rights hence sparking disputes among them. The research study also offered some remedies to the challenges faced in dual ownership. All in all, most of the research questions were answered in the affirmative.

The *kibanja* land holding as a form of customary tenancy evolved over the years. The challenge is in ensuring this transformation favors the harmonious co-existence between the landlord and his/her tenants. Land-*kibanja* ownership has been cumbered with a series of disputes which has left some people disgusted with this form of dualism and hence a need to shift the paradigm.

Lower local leaders such as LC I, cultural leaders, elders and courts should also be allowed to intervene in the land matters since they are more conversant with events happening in their immediate locality. Relevant laws should be amended to suit the changes in our society in as far as land-*kibanja* tenancy is concerned for ease of restoring community harmony and reducing the conflicts arising from dual tenancy.

5.4 Recommendation

Based on findings of the study the study clearly indicates that dual claim comes with dual responsibility which must be shared in the spirit of creating cooperation and co-existence instead of creating havoc, the following are the recommendations;

Tenants should be encouraged to buy off their portions from the landlords into land so that gradually the *kibanja* claim is eliminated and a class of land owners created. Tenant unable to afford buying off the *kibanja*, government should extend some loans (Land Fund) to them to enable them buy for themselves the *bibanja* and all the development in it or the government should buy off such portions from the landlords on behalf of the tenants then later recover its money from the tenants after a prolonged period of time inform of installment payments. This would eliminate the quarrels over busuulu payments and also addresses the problems of dual usufruct rights.

The government should also train and employ arbitrators at various levels to help in settling these disputes. Above all the local council leaders from the village levels should be empowered to have a stake in land and *kibanja* transactions because of their nearness to the community and knowledge of respective ownership of the land or *kibanja*.

Land offices especially the department of land registration should be strengthened with surveyors who would do their work at the cost of the government without transferring the burden to the applicants. This would eliminate middlemen who fleece the poor land owners of their little income and makes the registration process appear long and expensive.

Relatedly the period of processing the land title should be defined upon receipt of the relevant application documents to avoid the middlemen from extorting money from the said applicants for titles.

The researcher also finds it prudent to have another institution which checks on the work of the lands officials put in place other than the usual Inspectorate of Government. This institution would acts as an ombudsman to respond and follow up on complaints raised by the public on the anomalies realized in the operations of the lands officials. It would also investigate and offer redress on the unregistered and registered land brokers who are fleecing money from the applicants for land titles in liaison with the lands officials.

The government should also regulate land transactions especially *mailo* land because at present several brokers and dealers have emerged to transact in land without possessing any requisite

legal documents or formal registration with any government institutions.

5.5 Suggestion for Further Research

Due to the limited time and the diverse line of research in this aspect of dual *mailo* land tenure, the researcher could not exhaustibly cover all areas within the specified time frame. The researcher therefore would wish to draw the attention of other researchers into aspects of exploring research into challenges encumbered into other forms of land tenure such as customary land, leasehold and freehold. Since these other forms of land tenure are also composed of tenants, it would be realistic to investigate such areas and ascertain the challenges they face in co-existing with their land owners and then propose remedies to such challenges for ease of helping the affected persons and to guide the government in reshaping its policies in responding to land matters generally. It would also help is establishing whether such land tenures are cumbered with similar challenges as those faced in dual *mailo* tenure.

It's common knowledge nowadays that the government has picked interest in giving out land to investors irrespective of the type of land and its location. This has been associated with riots and evictions of the sitting tenants and land owners, it would be necessary for future research to be extended to such areas so as to enable the public to know why and how such circumstances arises and how it can be solved. This would avoid people from wasting time and resources in developing areas where they would be evicted from in the near future and would also enhance their capacity to seek for redress incase it happens.

In the course of the study, the researcher equally learnt that *mailo* land tenure has some semblance with the customary land tenure since *mailo* land tenure is based on the customs of the Bagandans. However since this was not the area of study, the researcher did not delve so much into this semblance. The researcher also proposed that more study be explored in establishing the relations between freehold tenure and private *mailo* ownership as the duo appears to be originating from one form. The researcher therefore proposed that future study be extended into these areas for ease of ascertaining their relations, tracing their genesis whether at one moment they were borne based on the same interest and hence making comparisons and contrast there from.

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APPENDICES

APPENDIX I. SELF ADMINISTERED QUESTIONNAIRES:

Esteemed respondent, my name is Okello Jacob Peter Okidi a student of Uganda Martyrs University currently pursuing a course leading to the award of Masters of Arts Degree in Human Rights. I'm conducting a research on "The Challenges of Dual *Mailo* land Ownership in Central Region of Uganda". You have been cited as a person in this field and I request you to kindly answer the following questionnaires to aid my study.

The information that shall be provided by you shall be used purely for an academic purpose and shall be treated as confidential.

Answer the questions either by ticking in the small boxes provided or by filling in the blank spaces provided. In case of inadequate space additional paper can be improvised by you.

QUESTIONAIRES

1 Respondent's name (optional)……...…….

2. Gender Male ☐ Female ☐

3. Are you a land owner or a *kibanja* holder? a) Land owner ☐ b) *Kibanja* holder ☐ c) Others ☐

4. Land/*kibanja* use, a) Residential ☐ b) Commercial ☐ c) Agricultural ☐ d) Educational ☐ e) Commercial-cum-Residential ☐ f) others (specify) ☐

5. For how long have you lived in your land/*kibanja*? i) 1-5 years ☐ ii) 6-10 years ☐ iii) 11-15 years ☐ iv) 16-20 years ☐ v) 21 years and above ☐

6 . How did you acquire the land/*kibanja* you currently occupy? i) Inheritance ☐ ii) Purchase ☐ iii) Lease ☐ iv) other (specify) ☐

7 . What documentary evidence of occupancy do you have a) Sales Agreement ☐ b) Certificate of Occupancy ☐ c) Lease Form ☐ d) Land Title ☐ e)others (Specify) ☐

8 . a) Have you leased or given out part of your land/*kibanja* to other tenants Yes ☐ No ☐

b) (i) If yes, what procedure did you follow when demarcating the boundaries of areas to the tenants?.....
.....

(ii) if no what is your reason for not having tenants on your land?.....
.....

9 What documentary evidence do the people occupying your land/*kibanja* have? i) Sales Agreement ☐ ii) Certificate of Occupancy ☐ iii) Lease Form ☐ iv) Land Title ☐ v) Others (specify) ☐

10 How do you differentiate a *kibanja* from a *Mailo* Land?

In question 7 (i), choose the one which is applicable to you

11 How did the concept *mailo* land and *kibanja* come to be borne?

12. i) What challenges do you encounter when;

a) Accessing land/kibanja……
……

b) Sub dividing land/*kibanja*.
……
……

c) Developing land/*kibanja*
……
……

ii) What measures do you take to address these challenges?.....

.....

13. What measures should be taken by other stake holders to address these challenges?.....

.....

14. i) What form of land ownership would you advise the government to adopt in order to solve the rift between the land owners and the tenants?

a) Customary b) Freehold c) Leasehold d) *Mailo* e) Others (specify)

ii) Give reasons for your answer as above……

……..

15. If you were the tenant in some body's land, how would you wish to be treated in terms of tenancy? a) Pay *Busuulu* annual rent b) Buy off *kibanja* into Land c) Sell of *Kibanja* to the Landlord d) Share the *kibanja* with the Landlord

16 a) Do you approve of *busuulu* rent payable to the land lords? Yes ☐ No ☐

b) Justify the reason for your answer as above?

……

……

17. What duration of time would you allocate to an absentee *kibanja* holder to reclaim his rights of ownership and why?

……

18. Which institution/body would you recommend to handle land matters in Uganda and why do you say so?

……

……....

19. What would you suggest should be done before tenants are evicted from their portions?
……

20. In case the tenant and the land owner want to harmonize their tenancy, what option would you advise the duo to take?

21. In case the duo has failed to reach a compromise, what other remedy would you devise to settle the matter?
.....

22. What community measures are in place to address land disputes in your area?.....
.....

23. The government initiative to introduce Certificate of Occupancy (CO) as a document for recognition of tenants in the land seems not yielding. What could be the inhibiting factors?.....
.....

24. What challenges do the law enforcement officers experience in the course of executing their duties in *mailo* land/*kibanja* related matters?……..……
……

25. Section 35 (i) (a) of the Lands Amendment Act 2010 asserts that a tenant by occupancy who disposes his/her portion without giving the first option to the owner of the land risk a fine of not more than 96 currency point (1.920,000/=), four years imprisonment or both and the transaction shall be invalid and the *kibanja* to revert to the land owner. How realistic is this law to both the tenant and the land owner?
……

Thanks for your participation

APPENDIX II

INTERVIEW GUIDE

Esteemed respondent, my name is Okello Jacob Peter Okidi a student of Uganda Martyrs University currently pursuing a course leading to the award of Masters of Arts Degree in Human Rights. I'm conducting a research on "The Challenges of Dual land Ownership in Central Region of Uganda". You have been cited as a person in this field and I request you to kindly answer the following questionnaires to aid my study.

The information that shall be provided by you shall be used purely for an academic purpose and shall be treated as confidential.

1. How was the concept *Mailo* land and *Kibanja* borne as it's commonly used today?

2. How do you differentiate between *Mailo* land and a *kibanja*?

3. What duration of time would you allocate to an absentee *kibanja* holder to reclaim his rights of ownership?

4. Which institution would you recommend to handle land matters in Uganda?

5. What would you suggest should be done before tenants are evicted from their portions?

6. a) Incase the tenant and the land owner want to harmonize their tenancy, what option would you advise the duo to take?

   b) In case the duo has failed to reach a compromise, what other remedy would you devise to settle the matter?

7. Has there ever been any community action to address land disputes in your area?

8. What do you say on the current law regarding *mailo* land ownership in Uganda?

9. Incase you were the commissioner of land, what measures would you devise to settle the *mailo* land tenancy in Uganda?

10. What advice would you give to the government to address the challenges facing *mailo* land tenure ownership in Uganda?

11. Court has also been blamed for issuing several letters of Administration to different claimants for the same piece of land/*kibanja*. How do such circumstances arise? What should be the remedy?

12. What is your opinion on the way Court handles Land matters?

13. There is a general concern that land titling is a long and expensive process. What is your view on the process of acquiring land titles?

14. What would you suggest to be the appropriate size of *kibanja* ownership in urban and rural areas?

15. As a land owner, would you give a potion of your land to tenants? Give reasons for your answer.

16. Would it be appropriate for the government to set the price of *kibanja*/land sale other than leaving it to willing buyer-willing seller?

17. In case the land lord and the *kibanja* owners have failed to agree in their negotiation, a mediator is to be incorporated to ease in reaching a decision. How effective has this been?

18. Under what circumstances do you think land offices issues multiple land titles to several people for the same portion of land?

19. What is your take on article 35 (i) (a) of the Land Amendment Act 2010 regarding the *kibanja* holder selling his/her portion without giving the first option to the land owner which attracts a fine of 96 currency points, 4 years imprisonment or both and the transaction pronounced invalid and above all the tenants forfeit the *kibanja* to the land owner.

20. How effectively has the Land Board contributed to the management of *mailo* land tenancy in your area?

21. How effective has the introduction of Certificate of Occupancy (C.O) fulfilled its intended purpose to both the landlords and the tenants?

22. What are the challenges that law enforcement officers undergo in the course of enforcing *mailo* land/*kibanja* disputes?

Thank you for your participation.

APPENDIX III

BUDGET ESTIMATE

S/No	ITEM		QUANTITY	UNIT COST	TOTAL
01	Stationery	Rims of papers	05	20,000/=	100000/=
		Dozen of Pens	01	5,000/=	5,000/=
		Note Books	03	5,000/=	15,000/=
		Stapling Machine/Wires	01	5,000/=	5,000/=
02	Secretarial Services	Typing	700 Pages	500/=	350,000/=
		Printing	700 Pages	500/=	350,000/=
		Photocopying	700 Pages	100/=	70,000/=
		Binding	05 Sets	10,000/=	50,000/=
03	Transport	Lump Sum		400,000/=	400,000/=
04	Research Assistants		04	100,000/=	400,000/=
05	Miscellaneous				200,000/=
06	**GRAND TOTAL**				**2,170,000/=**

APPENDIX 1V.

WORK PLAN FOR 2016

Activities	Time Frame								
	JAN	**FEB**	**MARCH**	**APRIL**	**MAY**	**JUNE**	**JULY**	**AUG**	**SEPT**
Topic Formulation									
Topic Development									
Proposal Development									
First Submission of Proposal									
Correction of Proposal									
Data Collection									
Data development									
Submission of Report									