

## **A HISTORICAL PERSPECTIVE ON LAND TRANSFER: “SHOWING THE LAND,” SURVEY, AND REGISTRATION IN (B)UGANDA FROM 1900-1950**

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### **ABSTRACT**

*Analyzing court cases from 1900 to 1950, this article documents the incomplete creation of a land market in Buganda, despite the legal possibility of land sale following the creation of mailo land in 1900. Survey, titling and registration of land became combined with mechanisms for land transfer which had already existed in Buganda, and the melding together of two sets of forms - and meanings- for land transfer led, inevitably, not only to ineffective transfer of land in individual cases, but also to the incomplete creation of a market in land. The buyers and sellers of land rarely, if ever, treated land as a commodity stripped of social obligations. The article describes the mechanisms for land transfer before the creation of private property in land, provides evidence of the hybrid mechanisms for land transfer which evolved, and documents the potential for fraud inherent in titling and registration and the potential for ambiguity inherent in “showing the land.” The difficulty in implementing private land ownership in Buganda between 1900 and 1950 suggests some challenges that will be faced in the implementation of the Land Act.*

### **I. INTRODUCTION**

Access to productive land assures subsistence as well as the ability to create wealth, and the land laws of the Uganda Protectorate sought to balance the interests of both *mailo* land owners and the people living on that land. A careful examination of litigation over land suggests that the intention of the law to protect the concerns of both land owners and land occupiers (tenants) were not always successful.

As the 2009 Land Act begins to take effect, a century of accumulated history regarding private land ownership in Buganda gains new relevance.<sup>1</sup> Mechanisms for

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1. See, S.L. LUNYIIGO, *THE STRUGGLE FOR LAND IN BUGANDA 1888-2005* (2007); H.E. HANSON, *LANDED OBLIGATION: THE PRACTICE OF POWER IN BUGANDA* (2003); A.B. MUKWAYA, *LAND TENURE IN BUGANDA: PRESENT DAY TENDENCIES* (1953); H.W. WEST, *LAND POLICY IN BUGANDA* (1972); and E. Troutt, *Rural African Land Markets and Access to Agricultural Land: The Central Region of Uganda* (Ph.D

land transfer are one arena in which the accumulated evidence from Buganda suggests the long term consequences of tenure innovation may be different than those we anticipate. This paper argues that survey, titling and registration became combined with mechanisms for land transfer which had already existed in Buganda and the melding together of the two sets of forms—and meanings—for land transfer led, inevitably, not only to ineffective transfer of land in individual cases, but also to the incomplete creation of market for land.

The argument proceeds in four sections. First, the article describes the mechanisms for land transfer. Before the individualization of tenure, there were the social drama of “showing the land,” and the ceremony for succession on death called *olumbe*. Surveying, titling and the registration of titles were instituted to support individual land ownership. It is important to note that quite different expectations regarding the use of land were embedded in these forms of land transfer. The second section outlines the ways that mechanisms for land transfer became enmeshed with each other: the act of surveying, independent of the map produced for title became equated with “showing the land” and documentation related to Ganda succession upon death became part of the process of registration of title. Court cases show that the various logics of land use were also combined. The third section examines how these hybrid mechanisms complicated land transfer in Buganda: the tendency for sale to occur at the time of inheritance led to land sale failures. The potential for fraud inherent in titling and registration and the potential for ambiguity inherent in “showing the land” were also sources of land sale failures. The concluding section of the article identifies aspects of the history of land transfer in Buganda that may be useful in contemplating land titling and registration schemes at present.

## II. LAND TRANSFER BEFORE MAILO

Over the centuries, probably beginning sometime around 900 A.D, permanently cropped bananas became the staple food of the Baganda, which developed clearly defined means of transferring land.<sup>2</sup> Land scarcity was not an aspect of the tenure situation before the middle of the 20th century.<sup>3</sup> Before the individualization of land tenure in 1900, land was allocated by the local political authorities, acting in the name of the kabaka, who was in theory the owner of all land. A person who received land was committed to use it, and to express allegiance to the allocating authority.

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Dissertation, University of Wisconsin, 1994).

2. HANSON, *id.*, at 28-36.

3. WEST, *supra* note 1, at 5.

In 1900, private property was created at the level of large estates: the people who had been chiefs became owners of trunks of land purportedly equivalent to what they had controlled and continued to allocate plots to peasant farmers on their lands. The specific mechanism for transferring land—both large estates and small plots—was the social drama of “showing the land:” a group of people including the giver and the receiver of the land, representatives of several levels of political authorities and neighbours observed the giver of the land showing its boundaries to the receiver and the planting of a bark cloth tree to commemorate the exchange. In a 1959 court case one, of the witnesses to a social drama of “showing the land” described the event:

We were three attestors to the scene of giving the plaintiff the new plot. If the giver and the given are added, then the number becomes five. ... The giver took round the plaintiff showing him where the plot takes limits. ... After the inspection of the plot, the plaintiff was told to start cultivating; he needed not give first a gift of gratitude to the giver.<sup>4</sup>

All the people present at “showing the land” were obligated to remember and passed down the memory of land exchanges for generations. In the 1920s, when Ganda chiefs were arguing about how specific lands had been allocated in the past, each person backed up their claim by reference to the messenger of the King who had been sent to divide the land. Where a messenger had been sent by the Kabaka and could be named, a land exchange had taken place; if no messenger had been sent, that was proof that no land had been exchanged.<sup>5</sup> Legitimacy in land transfer rested in people's memory of the person responsible for taking land from one person and giving it to another, as is evident in this testimony by a clan elder:

I was at my place at Kavumiro and I have never seen any one who came to turn me out of it, if I have ever been turned out, let that person who turned me out come forward.<sup>6</sup>

In addition to “showing the land,” Ganda facilitated the transfer of land through a succession ceremony called *olumbe*, which took place some months after a death. At

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4. Principal Court at Mengo, Civil Case 401 of 1959; High Court of Uganda at Kampala, Civil Appeal 107 of 1960.

5. Archives of the Uganda Protectorate, Secretariat Minute Paper No. 6902, “Bataka Land Commission” at 390, 391, 425 & 453.

6. *Id.*, at 425.

this event, attended by all the significant relatives of the deceased person, his or her successor was named and all the deceased's property was delineated and distributed. The leaders of the clan or sub-clan met to identify all the deceased's property and decided on a just distribution. Male heirs were then introduced to the king, and sometime before 1910, the whole disposition of the deceased's property was recorded in the king's "Book of Inheritance."

Once authority over land had been transferred from one person to another in the social drama of "showing the land" or *olumbe*; the new controller of the land continually asserted his or her authority in relationships with other people. The land controller received tribute from the people who lived on the land and acted as their patron. A person who stopped receiving tribute and dispensing protection to the people who lived on land was no longer in control of that land.

In Ganda thought, control of land implied control of people on the land. Ganda chiefs and the British Protectorate authorities developed new mechanisms for land transfer in order to allocate individually owned land. Documents replaced memory as the means of demonstrating people's claims to land. At the time of the original allocation of *mailo*, which happened between 1900 and 1911, each new land owner received a "Preliminary Certificate" which included the typewritten name of the estate and a sketch map.<sup>7</sup> As teams of surveyors passed from county to county from 1904 onwards, these claims were solidified in "Final Certificates" which demarcated estates in maps that conformed to the cadastral survey: the surveying teams and local chiefs adjudicated boundary disputes between rival claimants.<sup>8</sup>

Land registration began in 1909, using the Torrens system, although the form of the law was modified in 1922.<sup>9</sup> In theory, sellers, buyers, and heirs of land registered ownership by arranging for survey of the parcel, if necessary, and then paying a fee to file the appropriate documents at the Land Registry in Entebbe. However, by 1925 it was estimated that 8,000 changes in ownership which had not been surveyed were waiting to be registered; by 1946 it was estimated there were 150,000 unregistered transactions.<sup>10</sup>

The authority implied by a certificate of title was absolute; owners of registered land originally had no obligations to the people living on their land: in fact, the assumption of the British colonial officers in creating means of documenting individual ownership of land was that titles would allow owners to commercialize their relationships with people on the land and use it to create wealth for themselves.

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7. Transcription of the Records of the Buganda Lukiko.

8. H.B. THOMAS & A.E. SPENCER, A HISTORY OF UGANDA LAND SURVEYS 73 (1938), at 75.

9. WEST, *supra* note 1, at 165.

10. *Id.*, 173-174.

### III. HYBRID FORMS OF LAND TRANSFER

An examination of records of conflicts over land suggests that new forms for land transfer did not replace older forms, nor did they simply co-exist. Instead, the Ganda combined “showing the land,” survey, negotiations of sale, *olumbe* and registration, so that these ways of transferring land blended with each other, and a successful land exchange required all of them. “Showing the land” continued to be an enactment of the transfer and of every participant’s good intentions. Witnesses who had been present at the “showing of the land” acted to preserve the interests of the land owner. Courts sometimes ordered that a recalcitrant land seller “shows the land” in the presence of local bureaucrats to a buyer who had paid but had not received land. Memories of “showing the land” continued to have validity in determining who owned land.<sup>11</sup> An important component of land cases at local district and higher level courts was a re-enactment of “showing the land” in which the judges of the cases and both litigants travelled to the land in question and met with local authorities, witnesses to the original land exchange and neighbours.<sup>12</sup>

In Buganda, land survey took on the meaning of the social drama of “showing the land.” Instead of being the technical preliminary step that would allow the accurate marking of boundaries on the title of land to be transferred, survey became an event that demonstrated ownership. In contrast to “showing the land,” however, survey was a social drama that did not require the participation of neighbours, witnesses and local authorities. People whose claims to land were not acknowledged in the community hired one of the two independent surveyors in Buganda to give their claims credibility and keeping the surveyor off the land—or getting the surveyor on the land—became a focus of land conflicts. Local chiefs had the authority to prevent a survey from taking place, unless the person who wanted to carry it out could prove with documents that he owned the land.<sup>13</sup>

*Olumbe* became an integral part of land registration and sale. The most obvious aspect of this is that the Buganda “Book of Inheritance” served (and continued to serve in the 1990s) as the first reference point regarding land ownership. Succession to land involved entering the distribution of property in the “Book of Inheritance” and also changing the title deed. Both systems operated simultaneously, but the “Book of

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11. Principal Court Civil Case 141/1953; E.S. HAYDON & I.S. LULE, KINGDOM OF BUGANDA CUSTOMARY LAW REPORTS 1940-1955, (1956).

12. *E.g.* *Kalule v. Bwaniko*, High Court Civil Case 401 of 1959, Civil Appeal 107 of 1960; *Walusimbi v. Kironde*, Civil Case 104 of 1941, Civil Appeal 10 of 1942.

13. *Nsingisira v. Nabamba*, Principal Court of Buganda at Mengo, Civil Case 55 of 1942; High Court of Uganda at Kampala, Civil Appeal 3 of 1943.

Inheritance” was considered primary. People who wished to transfer title to land in Buganda had take to the Registry Office a document indicating that evidence regarding their authority over the land could be found in “The Book of Inheritance;” this involved searching through the volumes in which the succession decisions of clans were recorded.

A more subtle integration of *olumbe* and land sale is that the death of a land owner was the moment at which most land sales occurred. Undoubtedly some inheritors of land sold immediately because they felt they had no need for land, but a further explanation is that, in Ganda thought, the death of someone who controls land is the time when control of that land will shift in significant ways. Colonial judges and land officers considered hasty sales of land immediately following the death of a land owner to be one of the main causes of land conflicts in Buganda. They criticized clan elders who sold land because they were “craving to eat meat at the funeral” and people rushed to buy land from heirs before the new owners understood the value of their property.<sup>14</sup>

#### A. Hybrid Land Transfer: A Case Study

The hybridization of the means of land transfer is evident in the case of Yozefu Damulira and Alixondere Katende, whose conflict over 100 acres of land lasted from 1934 to 1951.<sup>15</sup> The dispute arose because Damulira immediately sold his portion of inheritance before his co-heirs had surveyed their land. Once the co-heirs had surveyed their parts of the mailo which was at Katogo, in Kyaggwe, the 100 acres of land which Damulira had sold Katende no longer existed. This was not uncommon: people bought an undesignated number of acres from someone who was due to inherit land, but the process of dividing land among heirs always took a long time, sometimes heirs stalled to avoid getting a less valuable piece or to avoid conflicts and they occasionally refused division in order to prevent sales. A buyer could be frozen out of his abstract purchase for long periods, up to decades, waiting for the heirs to make the succession concrete.

Six years after the initial sale, Damulira promised Katende 100 acres from his mailo in Bubwa villally in Sabagabo, Kyaggwe. However, he refused to designate the specific 100 acres which belonged to Katende. After waiting thirteen years to be shown his land, Katende took Damulira to the Principal Court and obtained an order for representatives of the provincial and district authorities, and the local chief in person, to observe Damulira showing the land to Katende in January, 1947. This event took

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14. See generally, HAYDON & LULE, *supra* note 11.

15. *Katende v. Damulira*, Principal Court of Buganda at Mengo, Civil Case 109 of 1947, Civil Case 174 of 1948; High Court of Uganda at Kampala, Civil Appeal 81 of 1951.

place in front of the appropriate authorities and neighbours designated as witnesses. A short while later, however, one of the witnesses observed Damulira allowing “Mr Sa,” an Indian tree cutter, to cut the trees on the land that had been shown to Katende. He challenged Damulira, but “when I asked the defendant why he had sold trees in the land of the plaintiff, he said he sold *land* to him and not trees.” Katende sued Damulira for shs 4,900/= for the value of the trees in 1948. Katende lost the case, even though the Principal Court and High Court judges agreed that the trees had belonged to him. The first step in his failure was the court's decision to ask him for evidence of a survey. The trees that had been cut down were within the area marked for him in the showing of the land; if he had been allowed to bring as witnesses the people who were present at the showing of the land, or if the court had travelled to observe the dispute on the land in the presence of representatives of the chiefs, Katende would have won. Katende makes this clear in his appeal:

Notwithstanding that the defendant does not deny having cut down the said trees complained of him in this case, even this being so still the court of the Omulamuzi refused to call those witnesses, the very representatives who handed the said land to me as above explained, nor did the court send its representatives or arising itself to reach at the land in dispute to make certain what part of the land from which the defendant did cut the trees. My lord, the trees complained of from the defendant were cut from the very part handed over to me by the said representatives and in consequence of which I would request this Court to direct or send out representatives to the scene and make sure.<sup>16</sup>

Katende got Mr. Boazman, one of the independent surveyors, to survey his land, as he had been instructed by the court and brought with him receipts to prove that he had accomplished that expensive task. The court then failed to take the next logical step - travelling to the land to see whether the felled trees were inside the cairns marking Katende's land. The British judge who heard the case at the High Court level ridiculed Katende for failing to bring a survey map to the court; but Katende had taken the normal course of action—having one's land measured and marked with cairns by the “chain men” of the independent surveyor was, in practice, a technical equivalent of the ceremony of showing the land.

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16. *Id.*

Perhaps Katende failed to make his case because he could not afford to pay for the court to travel to Kyaggwe; perhaps Damulira, who was clearly adept at managing court cases to his advantage, intervened in a way that caused the case to be heard by a judge who was particularly ignorant of Ganda land issues. The risks of taking land matters to court are apparent in this example: Katende stated in his appeal that he had “already pledged the land in this case,” that is, he had borrowed money to finance the survey of the land by Boazman so that his efforts to obtain compensation for his lost trees does not cost him the land itself.

#### IV. THE CONSEQUENCES OF HYBRID LAND TRANSFER MECHANISMS

The mingling of forms for land transfer made individual land ownership logical in Buganda and sometimes protected people from unscrupulous land dealings, but the complicated forms of transfer also led to essentially irresolvable conflicts over land ownership. “Showing the land,” *olumbe*, survey and title all had validity in the courts. Furthermore, the logic that people who control land are obliged to take care of the people who live on that land co-existed with the logic that an owner of land has complete rights over his or her property. This multiplicity of ways to legitimate control over land meant that litigants could prolong cases, hoping for a judge who would give more weight the evidence favouring them.

Land cases are the thickest files in the record rooms of the High Court because the same cases got heard over and over again. Among the conflicts that re-occur, with various resolutions, in land cases were conflicts between the authority of documents opposed to the authority of memory of social interactions; the propriety of using land to make profits opposed to the propriety of protecting the people on the land; exercising the right to sell opposed to protecting the heirs to preserve the wealth of their forefathers. Here below are discussed two examples of land sale failures.

##### A. *Muhamadu Kakembo v. Zakaliya Mubi*

The potential for fraud in land sale and frustration of commercial intentions for land use are apparent in the case of *Muhamadu Kakembo v. Zakaliya Mubi*.<sup>17</sup> Kakembo had sold his two mailos to Mubi for Shs 10,000/- in one hasty transaction on February 7, 1947. He claimed that he thought he was pledging the land in return for a Shs 5,000 loan with Shs 5,000 interest, but he signed over the title documents that day, and the loan

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17. Principal Court at Mengo, Civil Case 126 of 1947; Appealed to the High Court.

document he produced in court was considered to be a forgery.

In February, 1947, Muhamadu Kakembo was looking for money. According to his statement (in December 1949), he went to the shop of the “Indian Merali” where John Wangi and his friend John Lutaya told Kakembo that they could take him to someone who would lend him any amount of money at a moderate amount of interest. Lutaya was one of the men who worked for Mubi as a broker—finding people who wanted to sell their land. Kakembo claimed that at Mubi’s office he was told, orally, that the land was to be transferred into Mubi’s name just to prevent him from selling it to someone else; other people who sold land for ridiculously small amounts told the same story.

In court he produced the sale document, written on February 7, 1947 and a loan document, which the court considered to be a forgery, dated February 25, 1947. Whether the initial transaction was understood to be a sale or a loan, an agreement of sale was prepared in Mubi’s office and Mubi, Kakembo, and Wangi—the broker, drove immediately to Entebbe in Mubi’s car, where Kakembo signed the transfer of title in front of the Registrar of Titles. Mubi had paid the transfer fee of Shs 224/- and Kakembo signed a receipt for Shs 10,000/-. He testified:

Kakembo made for me the transfer of the land into my names which he duly signed in the presence of the Registrar after having it read over to him and waived and then signed on it ... also the transfer was made on the 7th February, 1947, and that was the end of that.<sup>18</sup> Kakembo claimed he did not know at the time that it was the end of his ownership on the two miles his grandfather had received half a century before.

“We lost our land to lawyers” is a common statement in people’s land histories in Buganda: buying land from people who needed cash immediately appears to have been one of the businesses of Hamisi Mukasa and Company. That the entire transaction was concluded immediately suggests that Mubi knew it was unfair and Kakembo would not consent to it if he had an opportunity to think about it: usually months elapsed before the several phases of the Entebbe Land Registry Office portion of a land transfer were completed.

The strongest evidence that Kakembo really had not perceived the transaction as a sale was his reported alarm when he discovered that Mubi had dismissed his land stewards. According to Kakembo, it was the sending away of his stewards which

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18. *Id.*

alerted him of Mubi's "determinedly intention to deceive my land." The power to control the people on the land demonstrated ownership more clearly than the procedures at the Land Registry office; it is conceivable that Kakembo only realized that all the formality in Entebbe implied he had given up his land when Mubi drove away his stewards and appointed new ones. When this happened, he tried to give Mubi back the money, but was unable to do so, and then he took the case to court for the first time.

Kakembo initiated a court action in July, 1947, after discovering his land stewards had been dismissed, some of his porters had been driven away from his coffee plantation and Mubi was harvesting his coffee. He withdrew this case two months later, perhaps because he realized he lacked sufficient evidence. When he initiated the case again, he had created the loan document and found witnesses to back up his loan story, but the forgery was obvious and the witnesses did not corroborate each other. When Kakembo failed to get his land back, he strategically changed the terms of the argument. Instead of claiming to be an owner of two miles which had been swindled out of his land, he claimed to be the producer of coffee on several plots on the land that had been sold and that a new owner could not deprive a peasant agricultural producer of the fruits of his labour. Mubi drove away Kakembo's twelve porters who were working on the coffee and tried to harvest it "saying that he also bought that shamba in conjunction to the land." Kakembo disagreed, admitting that he had sold the land (a switch from his earlier story), but he had never intended to sell his coffee trees.

The Principal Court met on the land in the presence of both parties and representatives of the provincial, district, and local chiefs. They measured the size of the coffee plantations and heard from witnesses who stated that it was Kakembo's coffee. Back in court, Kakembo questioned Mubi, "While buying this land was there any mention in the agreement that I also sell the coffees to you?" to which Mukasa replied, "There was no mention as regards the coffees that he had also sold the coffees at all." Kakembo asked court to think of him as a tenant on the land that he had just sold. Perhaps because the sale had clear elements of a swindle, both the Principal Court and High Court complied with Kakembo's view of the situation. He had lost two square miles of land in one afternoon transaction, but the new owner was not able to control the productive resources on the land.

### *B. Sonko v. Senkubuge*

The first phase in Kresipo Senkubuge's twenty two year struggle to control land involved a purchase he claimed to have made from Yoana Sonko in 1947.<sup>19</sup> Sonko was

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19. *Sonko v. Senkubuge*, Principal Court Criminal Case 202 of 1948, Civil Appeal 75 of 1951.

a district chief who was the second generation owner of mailo land. He asserted his status as a chief, justifying his statements by referring to his followers, "my people all knew of this."

Kresipo Senkubuge was a highly educated man with a town address, who complained of trouble with his labourers and carried out all his correspondences in formal English, challenged the Registrar of the High Court regarding his capacity to uphold the standards of British Justice, and referred to the clerks who could not find a file as "two Africans on your staff." Senkubuge claimed to have bought 50 acres of land from Yoana Sonko in 1947 for Shs 350/=. This seemed to be an absurdly low price, particularly as Senkubuge also claimed that Sonko had received shs 2,886/= in rent that should have gone to Senkubuge in the five years the case had been disputed (i.e., the rent stood at shs 580/= per year). Senkubuge gave Sonko Shs 350/- in 1947, which Sonko maintained was a loan, but the loan document had gotten burnt in his house. (Houses did burn down often, however, Sonko also might have set the fire to get rid of the document.) G. K. Rock, a British solicitor, either gave Senkubuge a Shs350/- loan to buy the property, or according to Sonko, advised Senkubuge on how to legally cheat Sonko out of the land. In his appeal in 1951, Sonko wrote,

Your Honour, I have to disclose this to you, that it is through his (Rock's) cunningness that he gives advices to other people to cheat, if not, what is his proper profession which he is doing there in his office if it is not for advising people to cheat other persons' land?

Whatever the original agreement between the two men, Sonko refused to sign the official transfer document which meant that Senkubuge could not survey or control the land. Senkubuge apparently won the case which required Sonko to sign the transfer, but Sonko appealed against the ruling and avoided having it last for seven years. The Principal Court in Mengo and the High Court seem to have complied with Sonko in delaying Senkubuge's case: he eventually won in the lower court on a technicality which, given the opportunity, the Court might have overlooked, but Senkubuge would not allow them: his five letters to the High Court eventually succeeded in having Sonko's appeal overturned.

Yoana Sonko, like Senkubuge, invoked the formal rules of British land administration, but he also used profoundly meaningful Ganda rules of rights to land in his effort to keep the land away from Senkubuge. He argued that the agreement made with Senkubuge and Rock could not be legitimate because "it is not made in the formal way... It neither contains his signature nor those of the witnesses like how valid agreements are usually made out." The other component of Sonko's argument was that

he had sold that land to another man whose ancestors were buried on the land. At some time, either before (according to Sonko) or after (according to Senkubuge) the 1947 Shs350/- transaction, Sonko sold the same land to Yozefu Kabogoza, who was entitled to it because;

in that place there is contained Kabogoza's burials of his fathers and relatives a place which I should not have been able to sell to another person other than the respective owner of such burials to which he holds the ancestral rights.

Kabogoza's graves gave his claim legitimacy in accordance with the Ganda land law. It is possible that Sonko sold to Kabogoza in order to invalidate his sale to Senkubuge; it is also possible that he intended to sell the two men different pieces. Although Senkubuge was eventually able to force Sonko to sign the document transferring control of the land to him, Kabogoza was already behaving like the owner of the land. Kabogoza had collected *busuulu* and *nvujo* since 1947, had surveyed the 354.60 acres of land he had bought and showed the court land tax receipts that he had paid. Senkubuge and Kabogoza pursued opposite strategies in their efforts to prove that the each had the rightful ownership over the disputed land. Kabogoza solidified his claim by welcoming tenants and collecting *busuulu*. Senkubuge made his claim by creating a plan for commercial use of the land and trying to dismiss tenants.

A second court case, between Senkubuge and Muwanga, a tenant who had been paying *busuulu* and *nvujjo* to Kabogoza, placed that conflict in the location of the court. Senkubuge had sent away two other tenants before he took Muwanga to court to get rid of him. In 1948 he had sent away Mr. Kazimiri, "as I did not like him to damage my land." In January, 1953, he wrote to the next tenant who had been rented in by Kabogoza, Stefano Buyondo, saying that he had "reserved the land in question for my own purposes," that he would have gained Shs 2919/- from the land through supplying food contracts during the year that Buyondo had farmed it, and therefore Buyondo owed him Shs 2919/-, or "I will be compelled of taking the matter into litigation—subject to your own expenses and peril. In case you continue breaking my land during 1953, claim will be topped up accordingly." This notice was copied to three levels of courts. Buyondo was the legitimate tenant of Kabogoza, but he was frightened by Senkubuge's threat and left the land in 1953 or 1954.

However, in 1954, Kabogoza showed the land to Muwanga, and Muwanga became Kabogoza's tenant on the same land. Senkubuge then claimed that the commercial value of the land to him was Shs 50,000/- because he had intended to use it for grazing goats and cattle and as a rest camp for porters and Muwanga had to refund

him the Shs 3750/- he had already paid to a contractor to erect the labour camp. Senkubuge also made two explicit denials of social responsibility for Muwanga: first, that Muwanga lived on the land of another land owner—therefore Senkubuge did not have to grant him the rights of a tenant, and secondly, that he had not “as yet erected my headquarters therein”—therefore, he was not presently obligated to act as a landlord. Muwanga used his rent payments to Kabogoza to prove his right to be on the land; he presented his rent tickets as evidence, and described the ceremony in which he was shown the land:

In 1955, I George Muwanga of Kayabwe in the Ggombolola of Sabawali, Mawokota became a tenant on Mr. Yozefu Kabogoza's land situated in the above village. He took me round the boundaries of the kibanja.

Testifying in support of Muwanga, Kabogoza described his fulfillment of the obligations of tenancy—that he had been shown the boundaries and stayed inside them, and that he was cultivating the land appropriately. Senkubuge's failure to collect rent was the main evidence against him: clearly, if he was not collecting rent, he could not actually be the owner. Kabogoza had been collecting busuulu from the whole village for ten years; in the opinion of the court, this made Kabogoza the owner, unless Senkubuge could prove otherwise by survey.

The High Court notes on the case that it does not indicate how Senkubuge overcame Kabogoza regarding survey: both men had surveyed the same land. Somehow, Senkubuge won an acknowledgement that he was the owner of the land, but the Principal Court ordered Senkubuge to accept Muwanga as his tenant. This decision was framed in terms of when the survey was done: it was wrong for him to have sent eviction notices until after he had surveyed; and Muwanga had complied with the tenant's law because he could not know before the survey had been done that he was paying rent to the wrong owner. The social means of establishing control of land were entirely absent in the court's reasoning, but its decision was that Senkubuge was obliged to accept social responsibility for Muwanga as a tenant.

For the next thirteen years, Senkubuge and Muwanga fought over this obligation. Senkubuge appealed to the High Court and won a determination that Muwanga should leave, but Senkubuge did not actually have the social power to evict a tenant and ten years later, Muwanga asked the High Court to reverse its decision, claiming he had repeatedly attempted to pay rent during that time. Senkubuge's ability to make land law and court procedures work in his favour were limited to the courts: he got the decision he wanted, but he was unable to drive a tenant off the land.

#### **IV. LESSONS FROM A CENTURY OF LAND TRANSFER IN BUGANDA**

The fraught history of land sale in Buganda provides lessons for Uganda as the consequences of the Land Act unfold. In Buganda, the forms of land transfer that had been useful before the creation of individualized tenure continued to exist. Survey, land title and registration were changed through their interaction with the forms of land transfer that were already in place.

The Ganda people who sold land, bought land and judged cases of land conflicts did not abandon the social logic that had characterized their use before the creation of individual tenure. The concept that people who controlled land were obligated to allow people to live on and use their land was challenged but not extinguished by the concept that land owners had complete rights over their land. Multiple and somewhat contradictory notions of land use interacted in the motivations and decisions of people who owned and used land. The one hundred year history of private property on land in Buganda draws attention to the importance of cultural variables in the transformation of tenure systems. In Buganda, “showing the land” became a component of court deliberations over land disputes and the social implications of death, as much as any economic factor, determined where and when land became available for sale. The buyers and sellers of land rarely, if ever, treated land as a commodity stripped of social obligations. Private land ownership in Buganda in the first half of the twentieth century provides a unique background against which current land policy decisions can be considered.