

John Mugalula, lawyer

Unmasking fraudulent land practices in Uganda

The land question today has elicited a lot of controversy. Not every person in possession of a certificate of title is truly the owner of the land and not every person who is rightfully holding a certificate of title is assured of the security of the land.

Land is the best social security available to many Ugandans. Unfortunately, the acquisition of land and protection of the same has become an area of concern as land grabbers and fraudsters are making a kill day in, day out. All savings made for the last 20 or 30 years can be extinguished by a land fraudster in one day.

Land grabbing takes different forms. It can be outright or express land stealing or it can be done constructively. No one is safe! You cannot rule out organised cartels of land grabbers comprising brokers, surveyors, lawyers and a financier or even, a doctor in case a deal goes bloody.

They know how to bully, undermine and even beat the system to their advantage. My preferred title for land grabbers is "land sharks". If you have not yet met them, you will. Once they come, stand your ground. Be firm and don't be afraid.

Violation of private property principles entraps a nation in poverty. Do not fear, do not quit and ultimately do not surrender fighting for your rights even if going to the Supreme Court.

Many will deliberately put you to unwarranted litigation so you tire out and give up along the way. Do not succumb to their ploys. Go all the way to the end. Even a decision against you in the lower courts should not deter you.

The law envisaged that justice may not well be served at some point, hence the appeal process.

The principles of justly protecting the rights and property of those in need of such protection, such as orphans, are brought together effortlessly in the Bible and the Qur'an. The Qur'an, for example, says: "And give to the orphans their property, and do not substitute worthless (thing) for (their) good (ones), and do not devour their property (as an addition) to your own property; this is surely a great crime".

In the Bible, the 10th Commandment is emphatic: "You shall not covet your neighbour's house". Despite the fact that land is an inelastic good, I am of the firm view that we still have enough land in this country for everyone. The problem is not about the quantum of land available, the problem is greed. There are so many cases where people implicated in the grab are the rich, who already own large chunks of land.

On the flipside, many who also portray themselves as poor are known to turn around after they have been fully compensated for their *bibanja* interests and claim ignorance of any prior compensation. Many fraudulent *bibanja* agreements involving LCs abound. This is a precarious situation for this country as it might escalate into social unrest.

The ultimate question in all land disputes is: How did you acquire the said land? Many sharks are quick at waving the certificate of title as the ultimate evidence of ownership, but dodging the question. In court proceedings, such a simple plain



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question is sometimes construed as a trick question by these sharks.

Most land grabbers have mastered the game and are smart. You can call them white collar sharks. Most common have resorted to land.

The reason is not hard to discern. It is more risky to steal from a bank than to steal land. In case of a bank, there is a real risk to life unlike in land grabbing.

To illustrate my point, in 2010 at Buganda Road Magistrates' Court, four persons were charged with the following offences: fraudulent procurement of a certificate of title c/s 190 of the RTA, false swearing c/s 100 of the PCA and conspiracy to commit a misdemeanor c/s 391 of the PCA.

The gist of the offence was that the accused had illegally obtained a special certificate of title alleging that the original was lost whereas not. In other words, it was a fraudulent land transaction with the aim of stealing land. They were tried and convicted.

All the accused persons were sentenced to a fine of sh100,000 each, in default a six-month imprisonment. The land in question was in millions of shillings, but the sentence was simply laughable.

This kind of justice only creates impunity and not deterrence which is the essence of criminal law. Be the judge, will such a convict be restrained from further misbehaviour in that area? I guess not.

It is increasingly becoming redundant and superfluous to pursue sharks in criminal law. The Police investigations are increasingly getting less and less convictions, but don't give up yet.

The rich and the highly connected have greatly undermined the entire security of tenure on land in this country to the detriment of the ordinary Ugandans. The sharks know well when to strike as their legal advisers are always alert.

The defence of the sharks is always bona fide purchasers for value without notice. It is important to protect an innocent third party who purchases land for value, but even then, greater protection must be extended to innocent land owners who are being deprived of their land fraudulently by a cartel of land grabbers.

Most of these sharks are actually not bona fide purchasers, if a good lawyer cared to unravel the genesis of the transaction. Any dishonest incidence in the transaction rebuts the defence. Courts with time have been flexible and need to rethink this concept.

Worst still, on many occasions, these sharks immediately mortgage grabbed land with unsuspecting financial institutions whose search is limited to land office, sparking off endless litigation.

This also in a long run affects the entire credit institution and ultimately the entire economy.

Potential buyers of land must look out for the following red flags: Special certificates of title (augment your due diligence), title subdivisions, survey prints, physical possession of land, boundary opening to ascertain which area you are buying, letters of administration (ascertain the beneficiaries), matrimonial property or family land (spousal consent), caveats, court orders, mortgages, *kibanja* interest (consent of the land owner), among others.

Once the land bought is for subdivision, the vendor should take care of the subdivisions and hand over completed titles to the purchasers. Alternatively, the purchaser should immediately take over the original title upon payment of the purchase price. It is not uncommon for sharks to be given a title to cut off their portions but end up transferring fraudulently the entire chunk of land.

There is an issue of the 'walking dead.' cases are increasing where living owners of land are declared dead without their knowledge. The sharks go to court, get letters of administration of the 'dead' person, go to land registry, get a special certificate of title and sell off the land immediately to X and from X to Y extinguishing any possible recovery. The conundrum here is that there is a prior certificate of title of the 'walking dead'.

This creates double titling of the same piece of land. The system acquisition of death certificates should be made air tight not forgetting mandatory use of national identity cards by the parties to the transaction. Buyers should encourage administrators to first distribute the estate by transferring it in the latter's personal names. But most importantly, potential buyers should not forget to invoke spiritual intervention and guidance. Surprised about that, you shouldn't.

All the bad things happening in land dealings in this country call for serious meditation and action. Even if well intentioned, the current constitutional amendment could worsen the already volatile situation.