

PRACTICE DIRECTION No. 1 OF 2007

PRACTICE DIRECTION ON THE ISSUE OF ORDERS RELATING TO REGISTERED LAND WHICH AFFECT OR IMPACT ON THE TENANTS BY OCCUPANCY

Pursuant to the powers conferred upon the Chief Justice by Article 133 (1) of the Constitution this Practice Direction is made to provide guidelines for a fair and smooth operation of orders in respect of registered land which affect or have an impact on tenants by occupancy, and it shall apply to proceedings before the judges, registrars and all courts subordinate to the High Court, including the Land Tribunals and the Local Council Courts.

1. Security of Tenancy by Occupancy on Registered Land

- (a) The Security of occupancy of tenants on registered land is guaranteed by Article 237 (8) of the Constitution and section 31 of the Land Act, and such tenants are deemed to be tenants of the registered owner.
- (b) Section 64 (2) of the Registration of Titles Act makes any land included in any certificate of title subject to the interest of any tenant of the land, though it may not be specially notified as an encumbrance on the certificate.

2. Determination of Lawful or Bona Fide Occupant

Where you have to determine whether a tenant is a "lawful" or "bona fide" occupant evaluate the evidence carefully, and establish the origin, succession to or acquisition of the tenancy (Kibanja) by the tenant by occupancy, and take into consideration the various laws, such as the Busuulu and Envujo Law 1928, the Ankole Landlord and Tenant Law

1937, or the Toro Landlord and Tenant Law 1937, the Land Reform Decree, 1975, and the Land Act, depending on the assertions of either party as to his/her rights.

3. Visit to Locus In Quo

During the hearing of land disputes the court should take interest in visiting the locus in quo, and while there;

- (a) Ensure that all the parties, their witnesses, and advocates (if any) are present.
- (b) Allow the parties and their witnesses to adduce evidence at the locus in quo.
- (c) Allow cross-examination by either party, or his/her counsel.
- (d) Record all the proceedings at the locus in quo.
- (e) Record any observation, view, opinion or conclusion of the court, including drawing a sketch plan, if necessary.

4. Orders Relating to Ownership of Land

- (a) Great care should be taken in making orders which affect or impact on the rights of the tenants by occupancy where they have not been parties to a suit, or where they have not been given an opportunity to be heard.

(b) Where a dispute is between a previous and a current registered owner of land, and involves determining an issue of ownership, or title to land, avoid making blanket orders, for example;

- (i) For eviction of an unsuccessful party, or putting the successful party in possession, when there is no evidence before court whether or not there are tenants occupying the land.
- (ii) For demolition of structures on the land when you have no evidence of who put up or owns the structure.

5. Orders of Demolition and/or Eviction

- (a) Where you come to a conclusion that a registered land owner has a right to demolish illegal structures on his/her land, you should be specific about the parties whom he/she sued, the parties who constructed the illegal structures on the land, and who have lost the case.
- (b) A court, when ordering the eviction of an illegal occupant of registered land, should determine a just and equitable date on which the occupant shall vacate the land and remove the illegal structure, and to determine the date on which a demolition and an eviction order may be carried out if the illegal occupant has not removed himself or herself, and his or her structure, or otherwise vacated the land as ordered.

6. Warrants of Eviction or Possession

When issuing warrants of eviction or to put parties in possession, or to demolish illegal structures, you should exercise diligence and avoid merely copying whatever is contained in applications for execution.

7. Orders for Sale of Immovable Property.

Where orders for sale of immovable property in execution of, and to satisfy a decree, or taxed costs, are made, care should be taken not to infringe on the rights of tenants in occupation of such property, or persons enjoying easements over the property, or the rights of other lawful encumbrancers

This Practice Direction is made this 22nd day of March 2007



B. J. Odoi
CHIEF JUSTICE