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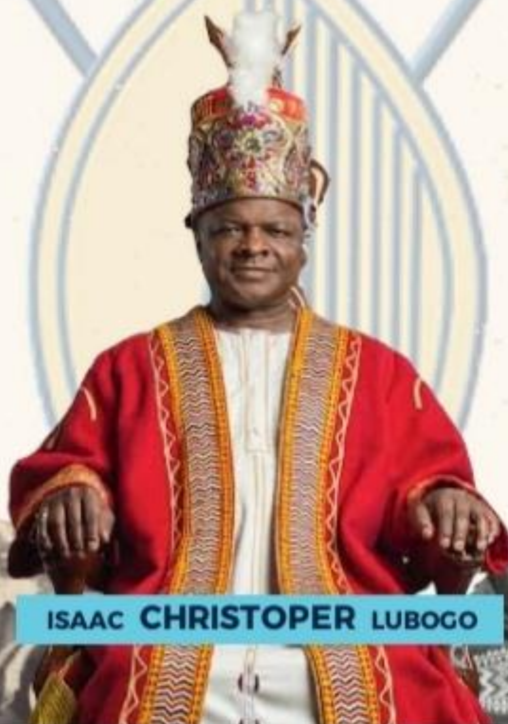
Exorcising the inexorcible

Buganda Ghost

HOODWINKED, DUMPED, USED AND RE DUMPED; A QUEST FOR BUGANDA'S CAUSE FOR BUGANDA'S INDEPENDENCE.

Kabaka Mwanga

Kabaka Mutesa



ISAAC CHRISTOPER LUBOGO

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A Quest for Buganda's Cause for Buganda's
Independence.

Isaac Christopher Lubogo

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The Inexorcible Buganda Ghost

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Dedication

Oh God, Even my God my High Tower, my refuge, my Redemeer, my only source of hope. This and many more is for you Oh God of the mighty universe.

About the Book

Exorcising the inexorcible Buganda ghost: Hoodwinked, Dumped, Used and re-dumped; A quest for Buganda's cause for Buganda's independence. Buganda in response to their proposals, were invariably faced either cynical deception.

What went wrong? Where did this insolent manner of talking down from the height of their exceptionalism, infallibility and all-permissiveness come from? What is the explanation for this contemptuous and disdainful attitude to Buganda interests and absolutely legitimate demands?

Buganda has grown weaker and subsequently broken apart. That experience should serve as a good lesson for Buganda because it has shown us that the paralysis of power and will is the first step towards complete degradation and oblivion. Buganda lost confidence for only one moment, but it was enough to disrupt the balance of forces in the Uganda.

As a result, this book will argue that the old treaties and agreements are no longer effective. Entreaties and requests do not help. Anything that does not suit the dominant state, the powers that be, is denounced as archaic, obsolete and useless. This redivision of the world, and the norms of international law that developed by that time and the most important of them, the fundamental norms that were adopted following WWII and largely formalised its outcome came in the way of those who declared themselves the "bread servers" under the scramble and partition of Africa.

Of course, practice, international relations and the rules regulating them had to consider the changes that took place in the world and in the balance of forces, especially the 1900 Buganda agreement, should have been done professionally, smoothly, patiently, and with due regard and respect for the

interests of all states and one's own responsibility. Instead, we see a state of euphoria created by the feeling of absolute superiority, a kind of modern absolutism, coupled with the low cultural standards and arrogance of those who formulated and pushed through decisions that suited only themselves. The situation takes different turn.

These Western colleagues (and their cronies) prefer to forget what they did, and when we mention the event, they prefer to avoid speaking about international law, instead emphasising the circumstances which they interpret as they think necessary.

This so called 1900 buganda agreement has pushed Uganda towards a humanitarian catastrophe and into the vortex of a civil war, which has continued up today.

The type of colonial con-artist behaviour was contrary not only to the principles of international relations but also and above all to the generally recognised norms of state sovereignty they used devide and rule.

This book offers no illusions in this regard and is extremely realistic in my assessment, further expansions of the Chinese influence deepen the Buganda question even more. For the colonialist it was obvious geopolitical dividends, for our country, it is a matter of life and death, a matter of our historical future as a nation.

The Buganda question is not an exaggeration; this is a fact; it is not only a very real threat to our interests but to the very existence of our state Uganda and to its sovereignty.

No doubts several red lines have been stepped over on numerous occasions. The cause and effect are that there should be no "staged coup" like the backfired " coffin cake " saga and third Kabaka crisis only and only ornamental election procedures towards the path of peace should be pursued. Buganda all must and should be done by peaceful political means.

It is Buganda's it is their aspirations, the feelings and pain of the people that is the main motivating force behind their decision to recognise the independence of Buganda.

Although Buganda may have accepted the new geopolitical territorial gains and loses, it should never lose its sovereignty and independence. We need to respect the will sovereignty of Buganda. Buganda has faced tragic events and a challenge in terms of its statehood and integrity.

Buganda cannot feel safe, develop, and exist while facing a permanent threat of its terrorial rights and sovereignty. The purpose of this book is to protect and remind the people of Buganda who, for over 700(seven hundred) years now, have been facing humiliation and genocide perpetrated by colonial legacy.

To this end, they as a people will seek to redeem, find and take back their " righteous God given sovereignty." It is not my desire plan to advocate for a Buganda territory. I do not intend to impose anything on anyone by force. At the same time, but history has it of a number of statements coming that what ever " documents" particularly the 1900 agreement was a mere puff from the colonialist and there is no need any more to abide by the documents setting forth the outcomes of World War I and II, as signed by the totalitarian western fascist, racial regimes, this book asks that magic question... How can Buganda respond to that?

A nation like Buganda should enjoy the right to self-determination, which is enshrined in Article 1 of the UN Charter. Freedom guides our policy, the freedom to choose independently our future and the future of Bugandas children, Buganda must be able to enjoy this right to make a free choice.

In this context I would like to address the unsettled Buganda question, Buganda is obliged to protect her sovereignty from those who stole it from them, their choice is in favour of being with their historical homeland, asoveign independent Buganda. The current events in Buganda and Uganda generally have everything to do with a desire to excorsize this in settled

"Buganda ghost" in quest for its independence which has existed for over 700(seven hundred) years. Those who took Buganda hostage and used it against them and Uganda, played a very unfair "game" used legal social contracts like the order in council, inception clauses, reception clauses and particularly the 1900 Buganda agreement which for all intent and purposes were done with a Minor, (Daudi Chwa) and compromised reagents with no legal authority and therefore no contractual capacity, biased, taintated with malafide, frivolous and vexatious only to serve their own selfish ends. To use Kabaka Frederick mutesa words "we are acting to defend ourselves from the threats created for us and from a worse peril than what is happening now" (emphasis added)

By allowing buganda to be used as a staging force to corce uganda and allign british intrest along the nile basin valley led to interfere in Bugandas affairs while strengthing Buganda from within as a single whole, but weakening Buganda from outside, the British exploited Buganda's best weakness " expansionist " tendency and prayed on Buganda's desire to extend its boarders from mere three counties to its present almost 20 but at the expense of its sovereignty and independence.

The book also addresses the loss of military force of the Bambowa, reducing the once best naval force in the interlacustrine area into mere " Byoya by a nswa" The Buganda fathers, grandfathers and great-grandfathers did fight the occupiers and did defend their common Motherland to allow today's continued neocolonialism to seize power in Buganda is to hoodwink, use, dump, use re-dump Buganda.

The Kabaka swore the oath of allegiance to the Buganda people and not to the colonial government, the people's adversary which plundered Buganda and humiliated the Baganda people. I want to emphasize again that all responsibility for the possible loss of independence of Buganda will lie fully and wholly with the leaders of the time.

Buganda Anthem

Uganda achieved independence on 9 October 1962 with the Kabaka of Buganda, Sir Edward Mutesa II, as its first president. However, the monarchy of Buganda and much of its autonomy was revoked, along with that of the other four Ugandan kingdoms.

Luganda lyrics

Chorus

Twesiimye nnyo, twesiimye nnyo

Olwa Buganda yaffe

Ekitiibwa kya Buganda kyava dda

Naffe tukikuumenga

Verse 1

Okuva edda n'edda eryo lyonna

Lino eggwanga Buganda

Nti lyamanyibwa nnyo eggwanga lyaffe

Okwetoloola ensi yonna

Verse 2

Abazira ennyo abatusooka

Baalwana nnyo mu ntalo

Ne balyagala nnyo eggwanga lyaffe

Naffe tulyagalenga

Verse 3

Ffe abaana ba leero ka tulwane

Okukuza Buganda

Nga tujjukira nnyo bajjajja baffe

Baafirira ensi yaffe

Verse 4

Nze naayimba ntya ne sitenda

Ssaabasajja Kabaka

Asaanira afuge Obuganda bwonna

Naffe nga tumwesiga

Verse 5

Katonda omulungi ow'ekisa

Otubeere Mukama

Otubundugguleko emikisa gyo era

Bbaffe omukuumenga

English translation

Chorus

We are blessed, we are blessed

For our Buganda

Buganda's pride dates back in time

Lets also uphold it forever

Verse 1

Since time immemorial,

This country Buganda

Was known by all countries

The world over

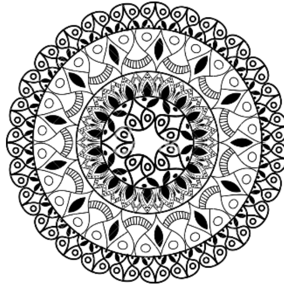
"Verse 2" The brave who came before us Fought a lot of wars and loved this country a lot So we should also love it

"Verse 3" Let the current generation fight to uphold Buganda as we remember our ancestors Who died for this country

"Verse 4" How will I sing and not praise The King He deserves to rule the whole of Buganda So let's trust him

"Verse 5" Lord God of kindness Help us Lord And pour your blessings And keep our king

CHAPTER ONE



Buganda the Magnificent

Buganda just like the Zulu kingdom was abuetiful, organized centralized state, infact so orgnised was it that it had the best naval army around the Lake Victoria, it had acentral head figre in form of the Kabaka, a person who wielded a lot of authority in this kingdom that has been exixtent for over 700(Seven Hundred years)

In his interview[1] with prof. Afuna Adhula, seasoned scholar Mahiri Balunywa argues that Prof Mukandala (2003) described Kings as stationary bandits. He argued that Kings were individual actors who usurped people power, property and all the factors of production. They suppressed the weak, dominated them and forced them into submission. The subjects became providers of wealth and all the basic necessities to the Kings. Thus, Kings became stationary bandits to grab whatever they wished. Mukandala said the other category of bandits are the roaming bandits. These once in a while raid the wealth and properties of the weak, which they amass and then start

[1] Interview of Oweyegha-Afunaduula (OA), a Conservation Biologist and burgeoning academic, Mahiri Balunywa (MB), an Admnistrative Management Executive by profession and Political Scientist.

boasting that they are rich. That is what Marx and Angels describe as "Primitive accumulation of wealth". Today we call them kleptocrats.

in scholarship we respect all shades of thoughts, whether this is true or not perphaps the better question is how did Kings acquire wealth and acquire properties, including land, since they don't work? Where do they get power to dominate the weak? These people historically have imposed themselves onto the subjects and coined theories to justify their hegemony.

There seems to be some grain of truth in what he says. However, we need to distinguish between divine Kings and Earthly Kings,

One would argue that “Divine Kings” If there is any thing like it were crowned by God with a special message to humanity. They never ruled but managed society on behalf of God. The few moments they attempted to go contrary to God's mission, God dethroned and punished them.

Earthly Kings fabricated theories of indispensability, royalty and heredity. Our current Kings to the centrally are more of business entrepreneurs and the chiefs they appoint are more of agents of primitive accumulation of wealth. On this note Vaughan (1980) argues that in some societies king’s ascent to Kingdoms through slaying previous kings. He says there two accepted ways in which Kings are made or replaced. First, through institutional regicide. Second, through ritual regicide. Institutional regicide is when members of society accept the leader as King. Ritualistic regicide is where the King accepts his fate and descends from the throne.

Civilization according to mahiri balunywa[2] there fore becomes fundamentally a process, not an event, which society goes through as it progresses from one stage of social development to another. It is a way of life

[2] Interview between Oweyegha-Afunaduula (OA), a Conservation Biologist and burgeoning academic, Mahiri Balunywa (MB), an Admnistrative Management Executive by profession and Political Scientist.

that humanity adopts at any one epoch to meet its greatest social development and organizational needs.

He further argues that the ancient civilization of China dates back to 4000 years and has been ranked as one of the four great ancient civilizations of the World and orthers like Egyptian Civilization, Babylonian Civilization and Indian Civilization.

Balunywa Mahiri further argues that Archaeological facts by Dr. Leakey and his wife, using carbon dating of fossil rocks excavated not far from the Busoga Basin over the years, support their view that Africa, in this case Eastern Africa, was the cradle of humanity and civilization. he adds that civilization does not begin with Man himself but with what he does. Remember that Man is part of the Mammalian, a subgroup of group of the Animal Kingdom, Animalia. This means Man was there in the past and continued in the present. Man, only entered into the civilization discourse when he began doing things that distinguished him from other animals; things like making tools to do work. This is what Darwin describes as man's transition from Home erectus to Homo sapiens, Darwin has described Man's original use of 4 legs and his transition to using two legs to walk and releasing the front two former legs to do work and manipulate things to make other things, taking advantage of his big brain. We now call those former legs hands. We refer to this transition as the beginning of human civilization.

Joseph, Needham, a historian of Chinese Science and Technology, and professor at Cambridge University, notes that Chinese civilization was ahead of Western civilization in every discipline of science and technology. He argues that Western civilization began recently as an offshoot of Babylonian Civilization during the era of Columbus. I want you to note that Babylonian civilization is a construction of European Civilization. This, therefore, means that, going by Needham's argument, Chinese civilization came before Babylonian civilization.

Mahiri argues that he tempted to believe that China's civilization is much older than Babylonian civilization. This is because archaeological studies reveal that about 500 years ago the Chinese entered the age of patriarchialism, which saw the emergence of villages, cities and agricultural pre-production in China. In this augment Shenong tested many types of plants for food and herbal medicines to cure diseases. He adds that ancient Egyptian civilization dates way back to the emergence of humankind, which demonstrated how the ancient Egyptian Pharaohs long discovered how their bodies could be preserved for 1000 years or more. Archeological studies revealed that their ancient tools of production were far more ancient than those of the other civilizations.

Civilization was basically associated with the level of knowledge achieved and the wisdom with which human society progressed. Today, civilization has been deconstructed to mean hegemony, dominance, repression, suppression and oppression of the weaker human societies. What used to be vices in the past are now pursued as virtues. When the Europeans made effort to improve their social development and progress they engaged in forced labor, which you have rightly described as slave trade, they came to Africa and suppressed African civilization, imposed Western civilization and plundered the Continent's resources. They did the same in other parts of the World. They destroyed African Kingdoms and societies and glorified primitive accumulation of wealth, which is robbery.

Therefore, European civilization is associated with all the vices of global capitalism, its creation, and manufacture of deadly weapons for emasculation of humanity. Using the level of capitalist development in the different parts of the World, Western Civilization refers to itself as the First World and those of Asia as the Second World. Africa, where human civilization started, is put in the Third World, or sometimes, Developing World.

Mahari postulates this with one small book he read some 20 years ago by George Orwell. This book has the title -Animal Farm. In this book animals resisted the farm manager because of his inhuman rules. The pig was elected

as head of animals and was subsequently appointed as a leader in a revolt, which saw the farm manager thrown off the farm. Unfortunately, the pig began doing exactly what the farm manager was doing. This confirmed the common phrase of the Bourbons in France having leant nothing and forgotten nothing.

The postcolonial leaders fought against European Civilization and colonialism. However, when they came to power they used Europeans, not only to kill fellow Africans, but also plunder the way Europeans did and suppress African culture. Today they are the agents of European ideas such as globalization, modernization, westernization, privatization and commodification. They are facilitating recolonization of Africa and reinventing slave trade, under the facade of getting jobs for their people they have failed to employ. They are looting their countries the way Europeans did.

Individuals are part of the greater social structure. As people come together, they set customs and laws, which govern them. This is what we call private relations among members of the community. In the legal profession, this is what they describe as the private law, which concerns relations among people who live together. This is different from public law, which regulates relations between individuals and the State-Government.

We have seen that Man is part of the mammalian subgroup of Kingdom Animalia. What makes Man different from other mammals is his capacity to be civil; which means being part of the social order and social cohesion. Man should think and act for the betterment of society. If any member of the Species of Man does not contribute to the betterment of society, then it means he or she is not civilized and needs to be civilized. He must undergo a process of civilization too. This is particularly important for those who are leaders of others because they must serve as the examples of who civilized people are.

The African setting was in of extreme diversity with structures of government reflecting the different levels of development. There were centralized and decentralized structures of society, and while some of the societies are developed class-based systems, most of them were communalistic; it's the layer future that defines the forms and structures of governance as well as relationships between individuals. Social values placed the individuals within the family. Kinship, clan, tribe (historically incorrect term) national, from which all his/her life revolved (land, marriage, penalties.) at the simplest of structures of governance was leadership based on age-sets and the council of elders and clan system. The more complex forms of political organization were evident in the more centralized societies ruled as kingdoms and chieftaincies (prominent in the interlacustrine region) where the kings exercised absolute power in appointments, land distribution, judicial decisions, etc. (e.g., Buganda). It was these kingdoms that given the developed state of structures of government, that the colonial power could apply the policy of 'indirect rule'

The pre-colonial societies that occupied geographical entities today known as Uganda, Tanzania and Kenya basically existed as autonomous and semi-autonomous institutions of governance. The process by which these entities were transformed new states created under colonial rule caused serious destruction of the social and political of these entities. This coupled with the introduction of new (alien) forms of government was to have a lasting impact on the structures and substance of government in the colonial and post colonial periods (evident even to present day)

The scramble for Africa at the dawn of the 19th century, which pitted the major European powers against each other, was eventually settled through an international conference in Berlin in 1884. However, prior to the Berlin conference, the powers had already effectively secured spheres of influence and the conference only served to give effect to demarcation of territories. The major actors in the partition were Britain, France, Germany, Portugal, and Belgium and to an extent Spain and Italy.

East Africa was invariably one of the main spheres of influence where hitherto relations that had developed with the sultan of Zanzibar and subsequently through the activities of the missionaries. Explorers and chartered companies. The early colonial history of the three territories (Buganda, Kenya, and Tanganyika) is largely similar in several respects, although there are also certain distinctions. The imposition of colonial rule and authority bore certain features:

Role of Chartered Companies in the Early Demarcation of Spheres of Influence had the Following Influence.

Imposition of colonial rule (powers, phases of administration, mode of administration, indirect rule agreements, legislation, O-I-Cs) nature of administration; harsh taxation, forced labor – structures (commissioners, governors, local chiefs, executive's co, leg co, courts e.t.c. Civilization character of rule (repugnancy doctrine and African social values, missionaries and religion) conflicts, education- schools, health- dispensaries, hospitals, commerce and trade. Cash crop economy – banks, loan- schemes, local administration. Land question (settlers and alienation, crown land and Butaka, etc. Political and constitutional developments (instruments and constitutional 'ideas, political parties, African representation and preparation for self-government).

For the country today referred to as Tanzania, its constitutional history began with the establishment of German rule, in mainland Tanganyika and kingdoms of Ruanda- urundi. Germany rule was basically established between 1886- 1890, and would last until 1914 – 1916. The mechanism used to establish the rule was by use of a chartered company (Germany east Africa co.) under the GEAC rule, life was harsh and administration was ruthlessly affected. The labor policy was based on force and land was alienated from the local people as the basic economic being of the territory moved from

traditional subsistence farming top commercial plantations. Because of the harshness of the company administration, the Germany government stepped in indirectly and established its own over rule. The colonial administration was represented by a governor, assisted by an advisory council, whose main role was making laws and financial appropriations.

The territory as divided into 21 districts with each of them under a district commissioner. The DCs were assisted by the Akidas who had control and responsibility for maintenance of law and order and resolution of cases/disputes (magisterial powers under pockets of villages). The Akidas were likewise assisted by the jumbes who were basically the village head men and they performed the same functions (this represents the Germany version of indirect rule). Direct rule was imposed on all districts except the district of Bukoba, which together with Ruanda- urundi, more less retained their pre-colonial methods of authority and a system of indirect rule despite Germany efforts to crush this.

When the German rule ended in Tanganyika, soon after the hostilities started in 1914, part of the territory was placed under military administration by hoes byatt. In 1917, he was appointed administrator of the liberated parts of the territory, and by 1919, he took over the whole of the territory. Subsequently, Tanganyika was placed under a mandate with Great Britain as a mandatory power, under which it remained until independence in 1961. British as formalized in 1920 via the Tanganyika order- in council 1920(legislation by the queen)

On the other hand, Uganda has many similarities with the history that characterized the birth of Tanzania and Kenya. The source of the Nile and economic –strategic interests had already ignited colonial rivalry over East Africa. But the rivalry in Uganda probably was fostered initially in the character of religion, whose very intensity would threaten social order within the territory, particularly in Buganda. The Protestants and catholic missionary groups were engaged in a religious rivalry which in underlying tones political rivalry was given the backing powers- Britain and France. It's

pertinent to say that from the outset of the existence of Uganda ads a state, politics and religion was inter-related as early through the missionary influence in Uganda.

The religious groups that emerged dominant were the protestant and it would also become the dominant force in the political evolution of the colonial and post-colonial state in Uganda. The religious factor would permeate the social life (schools, hospitals, etc) and political parties of Uganda's history even up to the present day (although the Arab influence itself gave birth to the minority religion of Islam, and which in the Amin political period gave the Muslims a dominant role). The struggle among the religions in Uganda's political and constitutional development has thus been a salient feature of our country.

The religious factor was in its early form prominent in the seeking of favors of the kabaka by the missionary groups in Buganda. Eventually after the resolution of the religious conflict in Buganda and after a brief period of administration by the IBEACO, and the wars of resistance (especially in Kabalegas' Bunyoro and Mwanga's Buganda) had been subdues, the British flag was erected in Uganda for the first time on 1st April 1893 at fort Lugard (old Kampala hill). The protectorate was declared a year later, and between 1894-1900, the British consolidated their administration and overrule over the protectorate. In 1900, the British entered into an agreement with Buganda (ruling faction) Buganda agreement) whose significance was to pervade most of our colonial and post-independence period in both political and constitutional terms.

Being a subject to oral history, being passed down to generations by the elder groups of society, it is rather not surprising how these major two stories among others have happened to take shape in several other different versions of history. During the 16th century, Buganda began its 300years of territorial expansion annexing and conquering a number of chiefdoms and expanding from three provinces to twelve by the 1800s.

Buganda however had not always been the dominant power in that area as many have preached and believed. Although written history before the 1800s is scanty, archaeological evidence suggests that humans lived in the present-day Uganda from between 50,000 and 100,000 years.

These should have been organized in three political organizations. A caste Based Hima system in what would become South west Uganda and Rwanda-Burundi, a Bito system in Bunyoro in which power was accessible to all, and the rotary albeit centralized system that evolved in Buganda.

Even with the conquering theories of how Buganda as a kingdom primarily came into existence, the kingdoms ghost of expansion and political as well as economic

The Origins of the Buganda Kingdom

Today, Buganda is located in the South-Central region of the country Uganda bordering the northern shoreline of Lake Victoria. Being the largest traditional kingdom in the country, Buganda has an estimated population of over 8 million people called the Baganda and speak *Luganda* as their native language. The kingdom is currently headed by Kabaka Ronald Muwenda Mutebi II with its capital in *Bulange, Mengo.*

Buganda has an extensive history dating back to long before the 12century when it was still referred to as *Muwaawa-* a sparsely populated area. Unified in the mid 13th century (1300AD) under the first kings, Buganda continued to grow becoming one of the largest and most powerful states in East Africa during the 18th and 19th centuries.

There are various schools of thought that explain the origins of Buganda, the commonest being the Kiganda and Bunyoro Tradition theories. According to the Kiganda theory, the kingdom was established *by Ssekabaka Kaita-Kintu* who is widely said to have come from the direction of mountain Elgon 1314 AD via Bugisu, Budama, Busoga and finally the shores of Lake Victoria

where he faught and defeated the last indegineous ruler *Bemba Musota* seizing power, annexing land and crowning himself the head of all clans - *Ssaabataka.*

Kintu, in all of his glory is said to have arrived with 13 or 14 clans which he ordered to intermarry with the native people, the *Bannansangwawo* thus giving rise to the Kintu-based Buganda ethnicity. With the mysterious dissaperance of Ssekabaka Kintu, 36 kings followed in his footsteps breeding the present-day Buganda Kingdom.

The Bunyoro tradition theory explains Buganda to have been founded by Kato Kimera, a twin brother to Isingoma Rukidi Mpuuga the founder of the boot dynasty in Bunyoro. This school suggests that after Isingoma had established himself as a king in the areas of Bunyoro, he sent his brother Kimera to govern the outposts but on reaching the area, the young brother essentially broke away from Bunyoro creating his own kingdom which came to be known as the Buganda Kingdom.

Being a subject to oral history, being passed down to generations by the elder groups of society, it is rather not surprising how these major two stories among others have happened to take shape in several other different versions of history. During the 16th century, Buganda began its 300years of territorial expansion annexing and conquering a number of chiefdoms and expanding from three provinces to twelve by the 1800s.

Buganda however had not always been the dominant power in that area as many have preached and believed. Although written history before the 1800s is scanty, archaeological evidence suggests that humans lived in the present-day Uganda from between 50,000 and 100,000 years.

These should have been organized in three political organizations. A caste Based Hima system in what would become South west Uganda and Rwanda-Burundi, a Bito system in Bunyoro in which power was accessible to all, and the rotary albeit centralized system that evolved in Buganda

Even with the conquering theories of how Buganda as a kingdom primarily came into existence, the kingdoms ghost of expansion and political as well as economic independence is inevitably portrayed and cannot be overlooked as one endeavors to study the history of the same

The kingdom of the Baganda is the largest of the traditional kingdoms in present-day East Africa, consisting of Buganda's Central Region, including the Ugandan capital Kampala. The 14 million Baganda (singular Muganda; often referred to simply by the root word and adjective, Baganda) make up the largest Ugandan region, representing approximately 26.6% of Uganda's population.

The Baganda claim to be a people of mixed stock who migrated to their present habitat over the past six hundred years.! Their history is that of a small struggling kingdom amid tribal enemies, the most aggressive of which was the neighbouring kingdom of Bunyoro Kitara. Later, the picture is of a rapidly expanding kingdom successfully bringing into its orbit bigger and bigger areas of territory at the expense of its neighbours.

It was at the zenith of its power during the reign of Mutesa I (1857-1884) and it was at this time that the Europeans first arrived in the country. The British established their overall political power and protection in the next reign.[3]

Baganda villages, sometimes as large as forty to fifty homes, were generally located on hillsides, leaving hilltops and swampy lowlands uninhabited, to be used for crops or pastures.[4] Early Baganda villages surrounded the home of a chief or headman, which provided a common meeting ground for members of the village.[5]The chief collected tribute from his subjects, provided tribute to the Kabaka, who was the ruler of the kingdom, distributed resources among his subjects, maintained order, and reinforced social solidarity

[3] The Uganda Journal Vol.IV No.2 Septembe r 1950. 9

[4] Donald Anthony Low The mind of Buganda; Documents of the modern history of African kingdom

[5] Christopher Wrigley kingship and state

through his decision-making skills. During the late 19th century, Ganda villages became more dispersed as the role of the chiefs diminished in response to political turmoil, population migration, and occasional popular revolts.

Buganda currently is divided into 26 districts as of 2021. These are:

1.Buikwe

2.Bukomansimbi

3.Butambala

4.Buvuma

5.Gomba

6.Kalangala

7.Kalungu

8.Kampala

9.Kassanda

10.Kayunga

11.Kiboga

12.Kyankwanzi

13.Kyotera

15.Luwero

16.Lwengo

17.Lyantonde

18.Masaka

19.Mityana

20.Mpigi

22.Mubende

23.Mukono

24.Nakaseke

25.Nakasongola

26.Rakai

27.Ssembabule

28.Wakiso

Buganda is a constitutional monarchy. The current Head of State is the Kabaka, Muwenda Mutebi II who has reigned since the restoration of the kingdom in 1993. The Head of Government is the Katikkiro (Prime Minister) Charles Mayiga, who was appointed by the Kabaka in 2013. The Parliament of Buganda is the Lukiiko.

Before the arrival of Europeans in the region, Buganda was an expanding, "embryonic empire". It built fleets of war canoes from the 1840s to take control of Lake Victoria and the surrounding regions and subjugated several weaker peoples. These subject peoples were then exploited for cheap labor. The first Europeans to enter the Kingdom of Buganda were British explorers John Hanning Speke and Captain Sir Richard Francis Burton while searching for the headwaters of the Nile in 1862. They found a highly organized political system which was marred, however, by the ongoing practice of mass human sacrifice estimated at 800 persons annually.

(B)Ugandas and Her "Visitors"

Buganda received her very first foreign visitors in the year 1843 and these were the Arab traders. In early 1843, the first caravan of Arab trades led by Ahmed Bin Ibrahim widely believed to have been the first non-African to set a foot on (B)Uganda's soil, arrived in the court of Kabaka Ssuuna 11. He was later followed by Siney Bin Amir who also made his way into Buganda in 1844 alongside other caravans.

Financed by money lenders in Zanzibar, a thriving trade in ivory had existed for many years with tribes near the coast but the dwindling elephant numbers and the advent of guns which offered protection against warrior tribes encouraged traders like Bin Ibrahim to venture further into the interior in search for ivory.

It is unlikely that Bin Ibrahim, the Kabaka or any of the chiefs would have known the significance of the arrival of the trade caravan and, in particular, the guns that were carried to Buganda and her neighbors around the great lake's region.

Bin Ibrahim's caravan had brought along cloth, mirrors, beads, jewelry and spices to trade but it was the guns – Oh the Guns! That caught Kabaka Mutesa' s eye the most, and of course for a good reason. Although Buganda was the major power at this point in time, its spirit was still locked in a contest for supremacy contest with Bunyoro Kingdom in the west.

Needless to mention, the two Bantu kingdoms were the dominant centers of power in the region above Lake Victoria but Buganda's sphere of Influence gradually extended beyond through military raids and the installation of vassals. The other groups in the east and north west were mainly pastoralists and their normadic life style only supported lose political organization unlike the Hima, Bito and Baganda. This therefore did not encourage the formation and maintenance of standing armies as in the areas dependent on settled agriculture and the rearing of livestock.

In the case of Buganda, fertile soils and good climate allowed for a settled agriculture-based lifestyle, which allowed the keeping of regular armies. To Muteesa therefore, the guns offered a new piece of military technology which could shift the dynamic and give Buganda the upper hand in the contest for supremacy with Bunyoro. Kabaka Mutesa 1 therefore warmly welcomed Bin Ibrahim and became actively interested in supplying the trade caravans with ivory, and later slaves in exchange for cloth, trinkets and in particular, guns and gun powder.

Bin Ibrahim and his company were able to bring something else with them that would radically shape the politics and culture of religion in Buganda and Uganda as a whole. Islam was first taught in Buganda in the year 1844 during the reign of Kabaka Ssuuna11[6]. However, while Kabaka Ssuuna allowed the Arab preachers to teach Islam at his Court, he himself did not convert to Islam and neither did he encourage for it to be taught outside his court even if he is reported to have learnt portions of the Quaran.

The Baganda, like other African tribes practiced their own traditional religious beliefs with several deities but the Islam that the Arabs practiced, and which they spoke about during their time in Buganda so much intrigued Ssuuna's son and successor Kabaka Mutesa1, especially its teachings that greatly appealed to him in that he is said to have converted to Islam by 1869 alongside some of his chiefs and officials. Kabaka Mutesa 1 learnt the Arabic language and mastered the Quran and also directed all of his relatives to study and learn it. His palace at Banda was also made an Islamic Education Centre.[7]

This imposition of foreign religion would go on to alter not just the value and belief system but would have far-reaching consequences for the politics and survival of Buganda as a Kingdom, other power centers that existed at that time and the country as a whole. But such fears were still a number of years away and with the military superiority provided by the guns, Buganda

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[6] See: A brief history of Islam in Uganda, Uganda Islamic Museum and Research Centre

[7] Also see Islam in Uganda; A situational Report by Dr Abasi Kiyimba

continued with its expansionist tendencies that had started at the turn of the century.

This kind of adventure was looked upon with legitment concern by the Omukama of Bunyoro who, seeking to acquire his own guns through international trade looked North when the adventurers and traders had started emerging many sponserd by the Khedive Ismail Pasha of Egypt. The Egyptians southern adventures were informed and inspiredby the need to establish and take absolute control over the origins of the river Nile whose waters gave life to the dry Egyptian empire.

EUROPEAN INVASION OF BUGANDA

Privileged as self regarded, Buganda unlike the other parts of the country was able to interact with the very first Europeans to come to East-Africa as was with the Arabs; as early as 1862. On a quest to find the source of the Nile, Speake together with Augustus James Grant left Zanzibar in October 1960. On reaching Uganda, Grant travelled North and Speake continued with his journey to the west and was able to land into (B)Uganda as the first white men in 1862.

These were followed by Samuel White Baker and Charlse George Gordon. Soon enough, the explorer Henry Morton Stanley was also welcomed by Kabaka Muteesa1(1852-1884) in 1875.

From the arrival of Stanely we see a foundation for the coming of the Christian missionaries in construction. In his famous letter to the daily Telegraph, Stanely painted an overly romanticized picture of Muteesa. He presented the Kabaka as a great enlightened Despot eager to hear the gospel and propagate it all over his kingdom. However, the reality was quite different as the missionaries were yet to discover as they arrived into Buganda.

It should be noted that for ten full years (1867-1876) Muteesa had strongly patronized \Islam, learnt Arabic, attended and led prayers and ordered for the observation of Ramadhan fast.

Muteesa had a genuinely intellectual curiosity in the teachings of Islam but inevitably as a ruler, his concern was largely maters of state. He saw Islam as a religion which, under his patronage could enhance his own power but by 1876 this basis for the encouragement of Islam had been undermined by the forces of Muslim Egypt who were striving to incorporate the head waters of the Nile (including Buganda) into an Egyptian empire. There visit to Buganda in 1876 further precipitate the crisis in Muteesa's relation to Islam. These Egyptian Muslims criticized the Quibla (direction of the court mosque) and the fact that the uncircumcised king led prayers on Fridays.

They also encouraged the Baganda Muslims to strictly observe the \Islamic food laws by not eating any meat slaughtered by Kabaka's butchers. This seed of defiance sown by the Egyptians saw a number of Muslims executed at *Namugongo*. For Muteesa, it was not simply a matter of insubordination, serious as that was, but a confirmation of fears that Islam was becoming a politically subversive creed. So it was around this time that H.M Stanley visited Muteesa. For him, the advent of the *Muzungu* was a welcome opportunity to counteract the Egyptian threat as well as get in contact with the actual source of technological innovations which the Muslims had introduced but did not originate.

The letter did produce a speedy response in Britain. The Anglican Church missionary Society (CMS) hastily assembled a band of enthusiastic missionaries and the first two representatives of this group arrived at Mutesa's court on June 30th 1877 having travelled from Zanzibar on a route pioneered by Swahili trades. On 17th Feb 1879 a group of French Catholic White Fathers also arrived by the same East Coast route. With time Muteesa had come to realize that a complete alliance with any one of the Christian groups was neither practicable nor desirable and had decided that he should identify

with none of the new "*dini*" while allowing them to stay and extracting whatever advantages he could from each.

Reports from the explorers and missionaries painted a picture of hospitable and worthy colony that Buganda was with a well-defined system of governance which Muteesa 2 in his book Desecration of My kingdom decscribes to be in a *pyramid shape* with the Kabakas position secured at the apex (with no rivalry) and the common people at the base. There was a *Katikiro* (Prime Minister), *Omuwanika* (The Chief treasurer) and the *Omulamuzi* (Chief Justice) and a hiercahy of chiefs. It was also characterized by a standing army which was headed by *Omujaasi* (army general).

According to Prof. Apollo N Makubuya, Buganda had reported a great deal of advancement in the medical field in respect to diagnosis and treatment with midwives, orthopedics and effective herbalists with international recognition from an observation that was made by Dr. Robert Felkin in 1879 concerning the success of Buganda surgeons in conducting Cesarean births.

"The influence of the Arabs was strong. They warned Muteesa that the white men would ask to change his customs particularly concerning wives and slaves, and, if he did not do so, send an army to compel him. Mutesa listened and was willing to believe, but welcomed missionaries all the same, as he wished for their help and presents. Also, they might be useful a hostage. He recognized Queen Victoria as a great monarch but he had never seen anyone as powerful as himself, hew was not expect to have to fight, but was not afraid to do so"[8]

Muteesa should be believed to have been a consummate master at political balancing; keeping other factors constant, unlike his successor; Mwanga, who succeeded his father in October 1884 at the age of 18 years, coming up to history in a more difficult international climate of the late 80s.

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[8]Descretion of my \kingdom, Kabaka Edward Muteesa 2, Crane Books Pg.24

During the early reign of Kabaka Mwanga, the Kingdom had been divided into four religious' fractions; Adherents of the native religion, the Muslims, Catholics and protestants. Each of these vying for political control. In 188 Mwanga was ousted in a coup led by the Muslim fraction which installed Kalema, His brother. The following year, the protestant and catholic coalition forced to remove Kalema and reinstall. Mwanga II to power. This coalition secured an alliance with the Imperial British East African Company (IBEACO) and succeded in ousting Kalema and re installing Mwanga in 1890. The naked imposition of colonial rule in Uganda therefor kicked off in 1890 when IBEACO sent Fredrick Lugard to Uganda as its chief representative in the name of helping to maintain peace between the conflicting religious fractions.

Upon arrival in December, Lugard found that Mwanga had already signed a treaty of friendship with Karl Peters on behalf of the Germans who intended to extend their East African sphere of influence but this was no hindrance to (B)ugandas already decided fate as dictated by the 1884-1885 Berlin Conference.

The Berlin Conference

"*The Berlin Conference gathered a bunch of Europeans to plot ways to divide up Africa. It might not have been the start of colonialism, but it sure accelerated the process*"[9].

The Berlin Conference can be best understood as the formalization of the scramble and partition Africa. THE British coined this this sometime in 1884, and it has since then been used to describe the 20-plus years when the various European powers explored, divided, conquered, and began to exploit virtually the entire African continent. The European power scan be said to have been slow in the realization of there greedy need to claim land in Africa

[9] Trevor R Getz, Apicture worth a thousand words, Khan Academy

as they had kept to coastal areas for the most part prior to the idea of *slicing up* the entire African soil to themselves.

However, in 1884, this partitioning began when thirteen European countries and the United States met in Berlin to agree to the rules of dividing Africa. The United States however, did not actually participate in the conference both because it had an inability to take part in territorial expeditions as well as a sense of not giving the conference further legitimacy.

Before the idea of Scramble and Partition had been set into place, European Diplomacy treated African indigenous people in the same manner as which they treated the new world natives forming trade relations with tribal chiefs as was with the Portuguese and the people of Congo kingdom. With exception of the trading posts along the coast, the continent was essentially ignored.

This changed later on as a result of King Leopold's desires for personal glory and riches and by the mid 19thcentury, African was now considered ripe for exploration, settlement and exploitation. From 1876, Belgium's king Leopold II announce his intent to fund an exploration of the Congo region and in 1879 sent H.M Stanley to the area with a secret mission to organize what would become the Congo Free State, a Mercantile enterprise in Congo. Generally, European interest in Africa had increased dramatically by the early 1800s.

The Berlin conference lasted almost four months from 15th November 1884 to 26th February 1885 in Berlin, Germany on the later date, Italy, France, German, Portugal, Spain and Britain along with King Leopold concluded the negotiations on the Partition of the black soil without African engagement and with absolutely no concern whatsoever of the African's on the same.

By the end of this conference, the European powers had neatly divided Africa amongst themselves with over thirty new colonies and protectorates[10].

"A conference about Africa but happening in a room in Berlin, Germany!

With zero Africans and only two of the attendees of that conference had ever stepped a foot on the continent-which, is about three times Larger than Europe.

Instead, it was bunch of European men, representing twelve countries in Europe, plus an American representative and one from the Ottoman Empire with a giant Map of Africa. Why? Because the job that the men at the conference had taken upon themselves was to divide up Africa between their respective countries"-Trevor Getz[11]

Uganda among other African countries such as Malawi, Nigeria, Lesotho, Swazi-Land, South Africa, Rhodesia, Malawi, the gold coast, Sudan, Egypt, Somali land, Sierra Leon and Kenya; fell prey to the British side of the scramble and because of the vastness of Britain's area of influence estimated to have coved over 412 million people, Britain was able to emerge as the leading colonial ruler in Africa. By the 1920s, Britain's area of influence is said to have been covering 24% of the Earth's total land area.

Even though at this point in time Mwanga had already fallen for Karl Peters charms and signed treaty with the later on behalf of the German East African Company on 29th February 1890, this was no reason enough to intimidate the British invasion of Buganda. Could one be right to conclude that Mwanga had foreseen the age of colonial hegemony and his choice to bring the GEACO closer to himself having been a preventative mechanism of defense or his cause for signing the treaty was to secure aid to solve the pre-existing religious trifles in Buganda?

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[10] General Act of the Berlin Conference, 26th February 1885 \z\

[11] Article by TrvorGetz, Khan academy Autthor of a Primer for teaching African History

Either way, the treaty Subjected Mwanga to the principles of the Congo Act which guaranteed Europeans free access and the right to settle in Buganda. This treaty also entailed Mwanga's rights to settle in Germany as the Europeans in Buganda.

Despite the existence of the treaty between Mwanga and the Germans, Lugard was yet to find solace in the Anglo German treaty which; for all intent and purposes was to serve the British Justice in their disentanglement of Buganda and Germany.

The Anglo German Agreement signed in July 1890 was Also referred to as the Heligoland treaty. In it, the Brutish Prime Minister Lord Salisbury exchanged the Heligoland Isand for influence in Uganda. In this agreement, Britain was to be allowed access to areas between Lake Tanganyika and Buganda as well As the Lake Nyasa region.

This treaty clearly defined the Undeniable influence that Britain had over Uganda and in an instant IBEACO had it all figured out for the commencement of its rule by sending Captain Lugard to oversee the foundation that had been laid by the earlier explorers and missionaries in the now "*ripe enough to eat*", (B)Uganda.

Capt. Fredrick Lugard

Capt. Fredrick Lugard

Set up by the Scottish shipping magnate; William Mackinnon in 1877, the IBEAC had been granted the royal chatter to over the areas of East Africa's interior of which Buganda was part of the *"British sphere of influence"*

While the term *sphere of influence* did not necessarily have mean total ownership over the territory, Fredrick Jackson of the IBEACO tried to unsuccessfully enforce such claims on Mwanga after Karl Peters had signed an agreement with the former.

Karaka Mwanga's refusal to sign an agreement brandished to him by Fredrick Jackson was his first act of defiance against the imperialists and this would surely not be his last. Having failed to convince Mwanga, Jacksons tour of duty would soon come to an end.

His replacement, Fredrick John Dealtry Lugard, a Sandhurst-trained British soldier and mercenary with a take-no-prisoners approach to resolving conflict would play a crucial role in the colonization of Buganda and Uganda at large.

Unlike the previous visitors who would arrive on the outskirts of the kingdom and send in gift-carrying messengers to seek permission to visit, Lugard arrived unannounced. *He was clearly on no quest to appeas*e. On 18th December 1890, Lugard arrived in company of 50 Sudanese soldiers, 70 Somali soldiers and 270 porters.

He did not carry the Customary prsents for the Kabaka but instead had with him an old and functional Maxim gun which could fire 500 rounds per minute and dhad changed the dynamics of warfare where ever it had been introduced to conflicts on the continent.

Where other foreign visitors had politely asked the Kabaka for permission and land on which to set up their homes, Lugard picked a spot of his choice on the present day Old-Kampala hill and set up his camp, overlooking and in a perfect view of Mwanga's Palace at Mengo. It was then after this that he sent in his word (not a request for permission) across the valley to Mengo that he was now ready to see the king.

The IBEACO had chosen to tread lightly in Buganda and one of its directors, George Mackenzie had advised Lugard to offer the Maxim Gun to Mwanga as an inducement to get him to sign the treaty however Lugard chose to defy this and play by his own rules.

He had crept up on Buganda through the sensitive Eastern route through Busoga without waiting for the guides that Mwanga had sent him. Then he had had the nerve to evict occupants of the old Kampala hill, an endeared spot and now just after a week of his arrival wanted Mwanga o sign an agreement handing over his kingdom to the IBEACO. Mwanga must have been impressed by Lugards confidence but not moved by his implied might.

On 24th December of the same year Lugard was almost shot by some of Mwangas men in a heated discussion over the treaty but was saved by Zakaria Kisingiri, who would later become his Major-domo father-in-law and a key collaborator of the crown.

The history of Buganda and Uganda might have been different had Lugard been shot dead that day. Despite his braggadocio, Lugard's position was not as strong as it appeared. He only had 11 bullets for each of his 120 soldiers and his maxim gun wasn't really as reliable as his confidence portrayed it to have been as he impatiently waited for the arrival of his assistant, Capt. Williams who was carrying ammunition.

On 26th December 1890, Lugard presented an agreement for Mwanga to sign. Lugard's proposal entailed threats directed straight up to the Kabaka and Mwanga was in no position to differ from Lugard's proposal.

Kabaka Mwanga signed this agreement but under duress. This agreement was clear and unambiguous declaration of a war against Buganda's Independence.

This treaty was to b valid for two years. This treaty denied Mwanga command of his own army, and required him to seek guidance from the company in all matters relating to the state, it restricted trade of arms directing it strictly into the control of the IBEACO.

After a year and about 3 months of signing this treaty, Lugard was now convinced of the survival and thrival of colonial rule in Uganda and it was for this mater that he needed to procure an eve more permanent treaty with Mwanga.

By 1892, Mwanga had already secured this second treaty and he was no doubt pleased with himself. According to Apollo N. Makubuya, the CMS and the French priests were astonished by Lugard's success and could not believe how easily he had accomplished so much in such a short period.

One of their biographers commented on Mwanga's humiliation, wondering how he had "put all the thousands of subjects and people from his vassal states under the protection of a simple commercial company."

He asserts that Lugard himself was impressed at the success of his trickery, writing in his diary:

"No man if he understood would sign it, and to say that a savage chief has been told that he cedes all rights to the Company in exchange for nothing is an obvious untruth. If he had been told that the Company will protect him against his enemies, and share in his wars as an ally, he has been told a lie, for the Company has no idea of doing any such a thing and no force to do it with if they wished"

Lugard was certain that the Kabaka did not understand what he accented to. Meanwhile, the religious rift in Uganda had continued deepen, worsening with the linings created by both the kabaka and Lugard. On one hand, Lugard who was a protestant enjoyed support from the protestants right from the time of his arrival where as Mwanga was backed by the Catholic Faction.

With time and grace, Mwanga had started to feel the plight of colonial hegemony and he knew that this was never a place for him to be. The *spirit for Buganda's independence* had hovered over him so He became rebellious and defiant; choosing to fly his own flag instead of the IBEACO flag.

Before long, Lugard had certainly had enough of Mwanga's *spirit of Independence and self determination* and this sparked off the Mengo war of January 1892. This was a result of Mwangas deliberate refusal to hand over a catholic convert that had been accused of murdering a protestant man.

Lugard had sent in numerous letters asking the kakaba to hand over the murederer which Mwanga was not willing to do. Mwanga is also quoted for having responded that if Lugard wanted war, he was ready to fight. This

annoyed Lugard who with the support of Protestants drove Mwanga together with the Catholics out of Mengo.

In the Discretion of my Kingdom, Muteesa II describes the happenings in his grandfather's kingdom as follows;

"*Then a Catholic shot a protestant and was acquitted by Mwanga. Lugard demanded to be given the man to try. Mwanga refused. Lugard gave out guns to the Ingelesa and Mwanga distributed gun powder among the Fransa. Another Protestant was shot. Mwanga was now flying a Flag of his own. Clearly the conditions were ripe for violence and on 24th January 1892, the fransa attacked. Lugard had some success with his Maxim gun. The Inglesa meanwhile swept over Rubaga hill and burnt the mission and the half-finished church. Mwanga and Many other Fransa escaped to the Islands*"[12]

A Week after this attack on the Lubiri, Lugard this time in person attacked Mwanga at the island where he had been hiding and this attack saw the death of over a hundred Catholics. The King was able to escape together with a few of his officials' surving the '*protection*' of Capt. Lugard.

Initially the British East African Company had estimated its annual expenses in maintaining a presence in Buganda at 40,000 Pounds annually a sum that hadn't always garanted a frofit. At the climax of Lugard's irrational exhibition of might and strength to rob Buganda of its sovereignty, a lot more expenses were realized and before long the company had registered a major financial set back and on 31st December 1892, IBEAC publicized its intentions to leave Uganda. Obviously, this news couldn't have reached Lugard with a smooth tone having had invested so much time, commitment, determination and more so finances in the realization of the company's objectives.

Lugard took a flight to London where he launched a sympathy-game kind of campaign in the name of '*saving Uganda*' and putting into account the lives

[12] Deacreation of my Kingdom, Sir Edward Muteesa II Pg.

of the missionary communities had had established themselves in Buganda thus painting a picture of the blood-bath that Buganda was to become with the white mans evacuation.

Lugard's crafty and persuasive nature managed to secure him some audience which praised him to be an intelligent and brave man. It also enabled him to defend himself against the allegations of excessive brutality and harshness as he pointed out to the Kabaka's shortcomings instead. Lugard pressed on Britain's need to retain Buganda which idea was warmly welcomed by H.M Stanely and Bishop Alfred Robert Turker.

Turker, Stanely and Lugard went around England campaigning for the declaration of a colony but since these were not backed by any black interest, some power hands had mixed feelings concerning the idea while others totally resented it. These few voices of dissent in England caused enough lack of consensus which led Britain's Foreign Secretary Lord Roseberry to send Gerald Portal (a man who would clatter give name to the Western town of Uganda, Fort Portal) to Buganda to try and find agadnswer to the Questions of what to do with (B)Uganda.

Even before he had arrived into Uganda, Portal had received instructions from Lord Rosebery turning the whole inquiry mission into a predetermined affair. Apollo N. Makubuya in his book, describes the actual intent as; *"Portal's mission was to take over the country from the IBEACO and administer it for the British Crown. The broader mission was for Britain to take over the source of the river Nile, recapture Sudan, keep out the Germans and French, and rule Egypt"*

Captain McDonald arrived in Kampala having completed a survey of the rail line to the coast.

Meanwhile, Lord Rosebery is said to have intended to delay the announcing of Britain's decision of its future policy in Uganda until he received a report from the newly appointed commissioner, Sir Gerald Portal.

GERALD PORTAL

Gerald Portal

In March 1893, Portal arrived in Buganda but this one history can prove that unlike Lugard and his immediate predecessor Capt. Macdonald wasn't a man of independent will and act. He relied so much on the advice of Bishop Tucker who went ahead to note in his book the role that he had played on the commission of inquiry.

"I had several conferences with Sir Gerald portal and had stated plainly what my views were. I did not disguise from him my opinion that wide spread disaster and ruin must inevitably result from any abandonment of the position, which in so formal a fashion had been taken up by Captain Lugard in the treaty of December 1890".

The said treaty which an intimidated but also reluctant Mwanga had signed after Lugard threatened war- had put Buganda under the "*protection*" of the IBEACO but in reality, this was all a scam.

Several historians have questioned how a motley force of less than 300 armed soldiers could protect an entire Buganda Army which had over 700 riffles and an estimated 20,000 spear-wielding extras not to motion the ease that came along with recruitment for Buganda in particular!

On First April, 1893 only a few weeks after his arrival, Portal took down the IBEACO flag that was flying over the Kabaka palace in Mengo and replaced it with the British Union Jack. For the first time, the union Jack had been flown in Uganda and it was to go on for the next 70 years.

Although he had been sent to establish whether Britain could declare a protectorate over Buganda, Portal had the nerve to fly the British flag with out requisite Parliamentary approval setting assail Uganda for the next 70 years of exploitation.

Soon enough, Portal had also entered into an agreement with the Mwanga and his trusted chiefs Apollo Kagwa and Stanslas Mugwanya on 29th May 1893. In this treaty, the British government was to take up (B) Uganda as a protectorate taking up all of the rights of the British East African Company.

In this agreement the once again excited Mwanga, this time even more desperate for British protection pledged to stop slave trading and slave raiding, to allow the queen to impose export and import duties on all goods leaving or entering Uganda, [13] to leave all of the matters pertaining to Uganda's foreign affairs into the hands of the queen, to always consult the Queens government on all serious matters concerning the state be it political, social or economic, To desist from engaging into any European treaties without the consent of the Queens government, Mwanga also pledged never to declare war without the approval of the Queen and lastly to always be bound to all International obligations to which Britain may be party.

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[13] (With duties to be fixed in accordance with the provisions of the General Acts of Berlin and Brussels of 1885 and 1890

For the second time, Mwanga and his Ministers did not understand the agreement they had signed. They had been Duped and Hoodwinked by Britain naming Mwanga the king of Buganda but the conditions of the agreement were by far different. Once again, Mwanga had been made a powerless puppet to the British to the extent of being arrested twice for illegal trafficking of goods within his own Kingdom and indeed the ghost of Buganda's independence was yet to be displeased with such occurrences.

" *What was meant to be a commission of inquiry had simply become a white wash for Britain's Imperial agenda in Buganda, supported by the protestant factions who for all intent and purposes were politicians in Cassocks*[14] "

Portal reportedly left two and a half months after signing the agreement to present his report to the Crown. He later died from typhoid while he was in London.

In order to officialise the matter, Lord Rosebery appearing before the British Parliament in August 1894 declared that;

"After considering the late Sir Gerald Portals Report and weighing on the consequences of withdrawing from Uganda on the one hand and on the other hand maintaining their interests other, Her Majesty's government ha determined to establish a regular administration and for that purpose to declare Uganda to be a British protectorate"

Roughly, it had taken over 20 years from the coming of the missionaries in Buganda to when the kingdom was finally declared a protectorate.

[14] See Article; Uganda @50, Monitor Ug. March 24th 2012

HENRY EDWARD COLVILLE

Henry Edward Colville

Following the official pronouncement of Buganda as a protectorate, Colonel Henry Edward Colville was appointed commissioner. Upon appointment Colville signed a treaty with Mwanga

Once again protection was promised, however this time by the crown[15] and Mwanga once again pledged to be bound by terms that weren't significantly different from those of the previous agreements. Kabaka Muteesa II describes the time there after as that where the trouble that had been threatening for a long period of time finally erupted between Buganda, the Muslims and

[15] Not the Imperial British East African company

Kabalega of Bunyoro. This marked the first operation of the joint forces of Buganda and Britain.

This took place in December 1893 against Bunyoro Kitara kingdom when Col. Collville led a full military campaign against Kabalega and his kingdom. After suffering a series of defeats, Kabalega surrendered and had to flee to Lango in 1894. Buganda was awarded by E.J.L. Berkely[16] for its assistance to Col. Colville as he had earlier promised. Buganda's spirit of greatness and supremacy was further enhanced when the Bunyoro territory south of River Kafu was incorporated onto her. This area comprised of the Bunyoros scounties of Buyaga and Bugangaizi which in Buganda turned out to be Northern Singo, Buruli and Northern Bugerere (this was Previously a no man's land)

Before his departure, Colville had severely fallen out with Mwanga. After numerous failed attempts to attack the British, Mwanga decided to camp in Buddu where he rallied up his armies against the British administration for his long-existed dissatisfaction. Unfortunately, he was defeated and forced to flee to Tanzania where he was later captured and imprisoned. Given a chance to escape from Bukoba where he had been imprisoned, Mwanga came back to Buganda only to face the same fate as he earlier had. He was again forced to go back into exile where he met up with Kabalega.

These two were found and arrested in April 1899 and were deported first to Somalia in a place called Kismayu and later to Seychelles. This deportation was legally in line with the terms of the agreements that Mwanga himself had previously settled with the British which provided that, "the right of confirming or otherwise the choice of the people of the successor to chiefship, and of deposing any ruler for misrule or other adequate cause" was reserved for the Governor[17].

[16] By this time Col. Colville had left Uganda due to sickness and had been succeded by E.J.L. Berkely.

[17] Lugard, *The Dual Mandate*, p. 207.

While in Seychelles, Mwanga breathed his last in 1903.

"Mwanga faught to free himself and his country of the intruders for all of his reign. He did not like or want them; He was impressed by their power but not in their ideas. He could not recover the old way of life nor adapt himself to the new...[18]"

RELIGIOUS WARS IN BUGANDA 1885-1900

These were also known as the **Wa-Ngereza Wa-Fransa Wars** in Uganda. They were fought between four different religious groups in Buganda protestants Catholics traditionalists and moslems

The missionaries had arrived in 1877 and another group in 1879.The European missionaries together with Moslems and traditionalists in Buganda wanted to increase their influence over the kabaka and the whole kingdom. By the time kabaka Mwanga gained or came to power in 1884, that was the situation he inherited. The Arabs and moslems took advantage of their position and warned the king about the presence of missionaries, that they wanted to take over the kingdom and since some of the converts had already started disobeying the king' orders. In order for the king to safe guard his position, he decided to take action.

In January 1885, Bishop Hannington was murdered when he tried to enter Buganda from the East. This was an act followed by the prophecy to the king that the people who would take over his kingdom, would come from the East. In June 1886, 30 converts were burnt at Namugongo when they refused to denounce their Faith. Mukanjanga was charge of the execution. Sensing the continuity instability, the kabaka planned to chase away all the religious leaders both Christians and Moslems but they discovered his plan.

[18] Muteesa II, Descration of my kingdom, Page 43

In 1888, both the Moslems and Christians combined forces and over threw kabaka Mwanga and installed Kiweewa. When Kiweewa refused to be circumcised by the Moslems, he was over thrown and Kalema was installed.

DuringKalema'leadership, Moslems influence increased and Moslems started persecuting the Christians. They killed the converts burnt churches and the Bible and so Christians fled for their lives to Kabula in Ankole.

The Christians then mobilized forces and returned to Buganda where they overthrew Kalema AND REINSTATED Mwanga in October 1888 with a lot of Catholic support. In 1890, Captain Fredrick Lugard was sent by the Imperial British East African Company (IBEACO) to Buganda and he used protestant missionaries to influence Kabaka Mwanga to sign a treaty in 1891 January. Lugard then armed the protestant Christians to fight against the moslems who were concentrated on Buganda- Bunyoro boarder.

Lugard then moved west wards towards Toro then Ankole but in January 1892, conflicts between Catholics and protestants rose again and this resulted into the Battle of Mengo where Lugard armed the protestants and defeated the Catholics

Causes of Religious Wars

The killing of the Uganda martyrs' group of 22 catholic and 23 Anglican converts to Christianity. Same also Muslims in the history kingdom of Buganda, now part of Uganda, who were executed between 31st January 1885 and 27 January 1887. They were killed on orders of Mwanga II, Kabaka (King) of Buganda. The martyrs who were killed, it was alleged that they were disloyal to the King who was Kabaka Mwanga by then hence ordering his chief Mukanjanga to execute them hence killed. some the martyrs in include Anatoli Kiriggwajjo, Antanansio Bazzekuketta, Charles Lwanga, Gonza Gonzaga, Balikudembe, Ssebugwawo Denis, kizito, Andrew Kaggwa. Etc. the killing of the Martyrs annoyed other Christians which created tension and suspicions making the religious wars in Buganda inevitable.

The struggle for political control between the Catholics and Protestants at the king' court led to the outbreak of religious wars. The Moslems and Christians and traditionalists wanted to retain the political influence over the king and the entire kingdom.

Kabaka Mwanga' struggle to maintain his position and power contributed to the outbreak of religious wars. This is because the missionaries had proved to be a threat to his position.

The differences in teaching whereby each missionary group had a different approach and principle used in order to get more converts. The local people became divided and this led to conflicts causing war.

Lugard' desire to show the British position of superiority in Buganda led to religious wars in 1892 Lugard' misunderstanding of the Kiganda law and tradition made him challenge the authority of the king and this contribute to the outbreak of the war.

Each of the Christian groups wanted their home countries to dominate the political influence in Buganda. The British missionaries (CMS) could not allow the two religious groups which eventually led to the war.

Lugard' desire to undermine the powers of the Kabaka through the protestant Christian chiefs and the pages made them disobey the king who decided to execute some leading to the outbreak of the war.

Kabaka Mwanga's favor for the Catholics in attempt to reduce the British threats on his power and position contributed to the outbreak of the wars.

Each of the European groups represented an important European power and these powers were rivals back in Europe. The Catholics represented the French and Protestants, the British. The transfer of the traditional rivalry between the British and French led to religious wars.

THE COURSE OF THE BATTLE OF MENGO IN 1892

In January 1892, Mugoloba, a catholic leader killed a protestant in self defence. Kabaka Mwanga tried the case according to the traditional Kiganda law and acquitted Mugoloba.

The Protestants were not happy because they thought the Catholics were using the kabaka against them. The Protestants appealed to captain Fredrick Lugard who then ordered for Mugoloba' execution.

The kabaka refused and so Lugard sided with Protestants, issued them with guns and added Sudanese troops. Together with his superior maxim gun, the protestants stormed the king' palace at Mengo on 24TH, January 1892

The Catholics and the supporters of the kabaka were defeated and the palace was then taken by Protestants while the king together with his catholic chiefs and supporters fled to Bulingugwe island o Lake Victoria.

From this, there was a lot of instability in Buganda and so Lugard re-instated kabaka Mwanga in March, 1892.

In April 1892, Lugard forced kabaka Mwanga to sign a treaty affirming the treaty of 1891. Also, Lugard made a new agreement with catholic chiefs and protestant chiefs in Buganda.

EFFECTS OF THE BATTLE IN MENGO IN 1892

There was loss of lives where converts were killed e.g Martyrdom at Namugongo, while others were killed in the due course of the fighting.

There was increased disunity among the people of Uganda and this made it easy for the British to colonize them.

The wars resulted into rivalry in the establishment of schools and churches which led to the wastage of resources and even made it hard for people from

the same ethnic groups to unite for social, political and economic developments.

The wars undermined the incredibility of the missionaries among the Baganda. The religious conflicts which begun in Buganda in form of religious wars spread to other areas in Uganda causing differences among the people.

The catholic and protestant rivalries which started during the religious wars have continued up to today hindering national unity. After the wars, the powers of the kabaka were greatly reduced. He could not declare war or take decisions on serious matters without the consent of the British Resident.

The wars led to discrimination in the civil service where most of the jobs were given to the Protestants in the colonial government creating more disunity among the people. From that time, the Catholics remained disgruntled and even in the days towards independence.

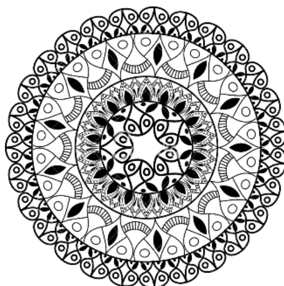
The Catholics were not willing to work with Protestants. In the 1950s, up to 1962, political parties were formed on religious basis e.g. The Uganda National Congress (UNC) was Protestant based, the Progress Party was also formed by Protestants and DP was catholic based meaning "**Dini ya Paapa**" (religion of the pope) and this formed the basis of the Democratic Party.

The wars resulted into instability in Buganda. The wars also reduced the spread of Islam because the Moslems were not favored by the British political arrangements. It enabled the British to secure collaborators especially Christian chiefs and converts whom the British used to extend their control over all parts of Buganda.

Buganda was divided between Catholics, Protestants and Moslems. The Protestants got the central counties e.g Kyagwe, Kyadondo, Mawokota and Busiro. The Catholics were given Buddu and the Moslems Gomba and Butambala but traditionists were not given anything.

From 1893, Buganda was to have two katikiros, one from the Protestants and the other from Catholics. The British also decided to give some catholic chiefs some land. The new land settlements led to the migrations of thousands of people and reduced the social unity which existed.

CHAPTER TWO



The 1900 Buganda Agreement

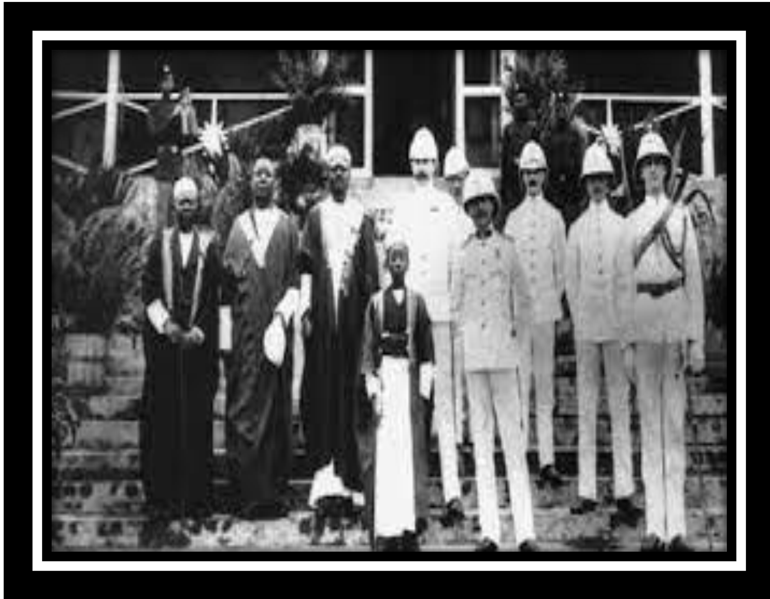
InJune,1894(following an agreement made in 1893) Uganda was placed "un der the Protectorate of Her Majesty Queen Victoria" and, by the Buganda Agreement 1894, made on behalf of Her Majesty and the Kabaka, Kabaka pledged himself to certain conditions. It's worth of note that the Agreement which conferred British protection on Buganda in 1893 was confirmed by a notification in the London gazette of 19th June 1894. Previous to the signing of the Buganda Agreement on 29th May 1893, two other Agreements which had been entered into by King Mwanga of Buganda and the Imperial British East African Company in 1890 and 1892 were not honoured by that Kabaka. Unfortunately, also the 1893 (1894) Agreement was also dishonored by the same King, thus leading to the making of the 1900 Buganda Agreement.

On 18 June 1894, the British government declared Uganda a British protectorate. Prior to 1894, the local African political entities consisted of either chieftainships or kingdoms. The area that has been known as Uganda since the reign of King Sunna, was inhabited by many ethnic groups with distinct languages, cultures, traditions, and socio-political systems, the Kingdom of Uganda being the most powerful political entity in the region.

The first direct contact between Uganda and the outside world came with the arrival of Arab Muslim traders from Zanzibar in 1884. In 1877, the first missionaries from the Anglican Church of England arrived in Buganda, followed by the Roman Catholics two years later. It was notable that the British colonial officials entered Uganda through a centralized kingdom rather than through a succession of disconnected societies, as they had elsewhere in eastern Africa.

Their arrival in Uganda was complicated by the presence of Catholic and Protestant missionaries and the ensuing Buganda succession war of 1888-1892. This religious-inspired civil war coincided with the imperial ambitions of Britain, which was trying to secure Uganda as its colony because of its importance with regard to access to the Nile. During the war, British colonial officials, following chief agent Captain Frederick Lugard of the Imperial British East Africa Company (IBEACO), lent their support to the Protestant faction led by chief minister (*Katikiro)* Apollo Kagwa. Soon, the IBEACO relinquished its control over Uganda after the wars had driven it into bankruptcy.

At the request of Sir Gerald Portal, Alfred Tucker, Bishop of Eastern Equatorial Africa and later Bishop of Uganda, urged the British authorities to take over Uganda. On May 29, 1893, a treaty between Portal and Kabaka Mwanga informally ensured Uganda as a British Protectorate. On August 27, 1894, Mwanga was compelled to sign another treaty with Colonel H.E. Colvile, who encouraged conventional takeover of the territory. Though the 1893 and 1894 treaties had been undertaken because, as stipulated by the Berlin Conference, Uganda happened to fall within the British sphere of influence, Britain lacked the sanctity of traditional rulers and their peoples. It was important that an agreement, as opposed to a treaty, be undertaken so that British rule would become de jure as opposed to being de facto



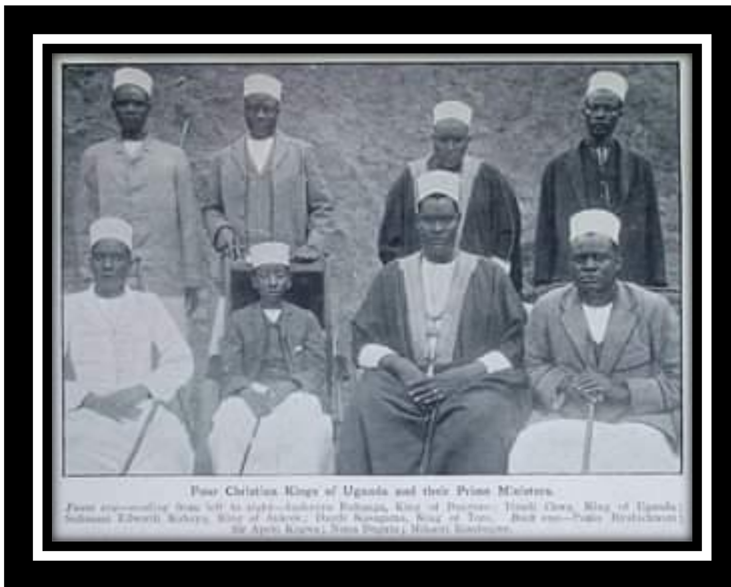
Earlier on in 1897, even before the death of Kabaka Mwanga, the self-seeking British for all intent and purposes of reducing Buganda to a mere Constitutional Monarchy. Buganda" s then top three heads, Apollo Kaggwa, Stanislas Mugwanya and Zakaria Kisingiri Kizito were able install and later enthrone the infant kabaka Daudi Chwa.II

By this time. Buganda had been put under the patronage of Henry Hamilton Johnson who had ariived in 1899 as Her Majesty's special commissioner, Consul General and Commander in chief of the British protectorate. Johnson who did not differ a lot from Lugard, was also able to lure Buganda into a new treaty which was signed in 1900.

It can be urged that the 1900 Buganda agreement sealed off any hopes for Buganda's independence as a nation state. Starting from this statement ". In the Berlin conference the superpowers sent their explorers to Africa who looked out to occupy all everything in Uganda and therefore the baganda

signed an agreement which they didn't even understand since Buganda was used as an access way for the colonial masters to colonies Buganda. [19]

The agreement was negotiated by Alfred Tucker, Bishop of Uganda and was signed on the 10th of march 1900 between two antagonistic camps and these include Buganda and the British , the Buganda Agreement was signed between Harry Johnson the new Commissioner of Uganda on behalf of the Queen of England and the Chiefs of Buganda, that is; Stanslaus Mugwanya, Zakariya Kisingili and Apollo Kaggwa acting on behalf of the infant king Kabaka Chwa II of Buganda who had then attained the age of four years.



Kabaka Daudi Chwa II with the regents, Apollo Kagwa, Zakariya Kisingiri, Nuwa and other chiefs after signing the 1900 buganda aggrement

To compound the matters even more, Buganda lacked an independent and self taking King. Daudi Chwa was too young to understand a yet his regents had a while back openly displayed their support for colonial rule when they

[19] Low and Pratt, Buganda and British Overrule 1900 -1955, two studies (Oxford, 1960), p.52-60

betrayed and sold Mwanga to the British. The Brutish had put in enormous work to buy the attention and support of these chiefs whereby Sir Apollo Kagwa had even been helped to fulfill his dream of reaching Britain.

It is therefore right to state that this was a "*one mans agreement*". Low and Prat describe the agreement as one where Buganda's signatories were presented with the agreement at time when they had no choice. Besides, the terms of the agreement were only understood by the regents by as far as the missionary translators had chosen to highlight which leaves questions on the legality of this agreement as we ought to doubt if there was a meeting of minds between the two parties over an agreement that was presented in an alien language to Buganda's signatories.

The Agreement was initially termed the *Uganda Agreement of 1900* but was later renamed the *Buganda Agreement of 1900*, under the second Schedule of the Uganda Order in Council, 1902, by Henry Hesketh Bell, the Governor of the Uganda protectorate acting under the powers conferred upon him by Article 6 (1) of the same Order. This Agreement has been variously described as "Buganda's Charter of Rights" the "Magna Carta", "Buganda's constitution" among others and was a landmark in British's relationship with Buganda. Apart from the Buganda Agreement, the British signed the 1900 Toro Agreement and the 1901 Ankole Agreement with the rulers of those two kingdoms. Similarly, the British were only able to conclude an 'Agreement' with Bunyoro in 1933, ten years after the death of Omukama Kabalega, who had mounted a serious and sustained challenge to colonial rule in his region. Although the latter Agreements were important in their own ways, they however did not achieve the prominence of the Buganda Agreement. Suffice to say, British colonial jurisprudence, through a consistent chain of judicial decisions dating from 1926 in Swaziland, declared throughout the African dependencies that the British crown could never be bound by any treaty concluded with indigenous rulers, because such treaties had no force of law. In effect, such treaties strictly speaking were not worth the paper on which they were written.

It can be efficiently argued that this agreement between Buganda and the British was signed in the odd most manner and timing. It was signed, at a time when Buganda had not fully recovered from the religious and political wars. Buganda can be said to have been in desperate "want" for British intervention in its recovery and keeping the flag of its superiority over the rivals in Uganda, high.

To compound the matters even more, Buganda lacked an independent and self taking King. Daudi Chwa was too young to understand a yet his regents had a while back openly displayed their support for colonial rule when they betrayed and sold Mwanga to the British. The British had put in enormous work to buy the attention and support of these chiefs whereby Sir Apollo Kagwa had even been helped to fulfill his dream of reaching Britain.

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In relating to the 1900 Buganda aggrement to international law standard its fraudulent because, although a treaty wasn't concluded with real consent of the parties .it is nevertheless not binding if the consent was given in error, or under a delusion or produced by a fraud of the other contracting party.

It is pertinent to give a broad categorization of the provisions of the Buganda Agreement in order to acutely assess its place in the changes that were brought by colonial rule in Buganda in particular and Uganda as a whole. It is better to segment this Agreement into four categories, briefly these are:

(a) the provisions which defined Buganda's subordination

(b) provisions dealing with the new administrative arrangements of the kingdom

(c) financial provisions

(d) Provisions of a general nature, falling outside the categories which, I have already enumerated.[20]

Buganda would henceforth be a province of the Protectorate, and would be transformed into a constitutional monarchy with the power of the Lukiiko (advisory council) greatly enhanced and the powers of the Kabaka were reduced. The British also gained the right to veto future choices of the *Kabaka* and control of numerous other appointments These provisions concerning the roles of the *Kabaka* and *Lukiiko were largely reversed by the Buganda Agreement of 1961*[21].

The agreement stated that the Kabaka should exercise direct rule over the natives of Buganda administering justice through the *Lukiiko* and his officials. It also solidified the power of the largely Protestant *Bakungu* client-chiefs, led by Kagwa. The British sent only a few officials to administer the country, relying primarily on the *Bakungu* chiefs. For decades they were preferred because of their political skills, their Christianity, their friendly relations with the British, their ability to collect taxes, and the proximity

[20] The Uganda Agreement, 1900 (See Native Agreement and Buganda Native Laws, Laws of the Uganda Protectorate, Revised Edition 1935 Vol. VI, pp. 1373–1384; Laws of Uganda 1951 Revised Edition, Vol. VI, pp. 12–26)
We, the undersigned, to wit, Sir Henry Hamilton Johnston, K.C.B., Her Majesty's Special Commissioner, Commander-in -Chief and Consul-General for the Uganda Protectorate and the adjoining Territories, on behalf of Her Majesty the Queen of Great Britain and Ireland, Empress of lndia, on the one part; and the under mentioned Regents and Chiefs of the Kingdom of Uganda on behalf of the Kabaka (King) of Uganda, and the chiefs and people of Uganda, on the other part: do hereby agree to the following Articles relative to the government and administration of the Kingdom of Uganda.
[21] Evolution of constitutional law, public and Government by. Prof. G.W. Kanyeihamba

of Entebbe to the Uganda capital. By the 1920s the British administrators were more confident, and had less need for military or administrative support.

By fixing the northern boundary of Uganda as the River Kafu, the agreement formalized Colvile's 1894 promise that Uganda would receive certain territories in exchange for their support against the Bunyoro. Two of the 'lost counties' (Buyaga and Bugangaizi) were returned to the Bunyoro following the Ugandan lost counties referendum of 1964.

Buganda can rightly be said to have been a 'protected State' in the Uganda Protectorate as seen in the diverse provisions of the Buganda Agreement, 1900 (herein after referred to as the agreement). The agreement acutely demarcated the geographical boundaries of Buganda and laid down its territory and also therein established its administrative, judicial and political–military jurisdiction

A BREAK-DOWN OF THE 1900 BUGANDA AGREEMENT AND ITS LEGAL IMPLICATIONS

The 1900 Buganda had stipulated numerous articles which constituted various constitutional measures that caused many Baganda to be left Usufrucunt and sealing off their hopes for federalism and these included.

Article 1 of 1900 Buganda agreement demarcated the boundaries of the kingdom and therefore Buganda was stopped from fighting wars with the neighbors so that they can colonise her very well , in linage to article 9 of the 1900 Buganda agreement that stipulated two counties of Buyaga and Bugangayizi which were given to Buganda as a gift after helping the British to defeat Bunyoro.Buyaga and bugangayizi they where added together to the territories among which it was demarcated as stipulated in article 1 as stated.

The demarcation of Buganda was of great significance as it clearly defined, established and protected its territory as a state within the Uganda

Protectorate. Together with Article 9 which set out the twenty administrative units (counties) of Buganda, the agreement confirmed the kingd om as the primary entry point of the control of the rest of the protectorate. The demarcation of the territory of the kingdom was of great significance because; it placed a restraint upon the expansionist tendencies of Buganda Kingdom, as its territory was now clearly demarcated and defined.

Also, within the boundary demarcation was the territory of 40 percent of Bunyoro's population and both its capital and the burial sites were given to Buganda for her assistance in the defeat and pacification of Bunyoro. This territory constituting 7 of the 20 counties would later be dubbed the 'lost counties', and remained contentious issue throughout the political and Constitutional development of the protectorate and the immediate independent State of Uganda.

The boundaries of the Kingdom of Uganda shall be the following: starting from the left bank of the Victoria Nile at the Ripon Falls, the boundary shall follow the left bank of the Victoria Nile into Lake Kyoga, and then shall be continued along the centre of Lake Kyoga, and again along the Victoria Nile as far as the confluence of the river Kafu, opposite the town of Mruli.

From this point the boundary shall he carried along the right or eastern bank of the river Kafu, upstream, as far as the junction of the Kafu and Embaia. From this point the boundary shall be carried in a straight line to the river Nkusi, and shall follow the left bank of the river Nkusi downstream to its entrance into the Albert Nyanza. The boundary shall then be carried along the coast of the Albert Nyanza in a south-western direction as far as the mouth of the river Kuzizi, and then shall be carried up stream along the right bank of the river Kuzizi and near its source.

From a point near the source of the Kuzizi and near the village of Kirola (such point to be finally determined by Her Majesty's Commissioner at the time of the definite survey of Uganda) the boundary shall be carried in a south-western direction until it reaches the River Nabutari, the left bank of which

it will follow down stream to its confluence with the River Katonga; The boundary shall be carried in a southwestern direction until it reaches the River Nabutari, the left bank of which it will follow down stream to its confluence with the River Katonga; The boundary shall then be carried up stream along the left confluence of the Chungaga, after which, crossing the Katonga, the boundary shall be carried along the right bank of the said Chungaga river, up stream to its source; and from its source the boundary shall be drawn in a south-eastern direction to the point where the Byoloba River enters Lake Kachira; and shall then be continued along the centre of Lake Kachira to its south-eastern extremity, where the River Bukova leaves the lake, from which point the boundary shall be carried in a south-eastern direction to the Anglo-German frontier.

The boundary shall then follow the Anglo-German frontier to the coast of the Victoria Nyanza and then shall be drawn across the waters of the Victoria Nyanza in such a manner as to include within the limits of the Kingdom of Uganda the Sese Archipelago (including Kosi and Mazinga), Ugaya, Lufu, Igwe, Buvuma, and Lingira Islands. The boundary, after including Lingira Islands, shall be carried through Napoleon Gulf until it reaches the starting point of its definition at Bugungu at the Ripon Falls on the Victoria Nile. To avoid any misconception, it is intended by this definition to include within the boundaries of Uganda all the islands lying off the north-west coast of the Victoria Nyanza in addition to those specially mentioned. One of the significances of article 1 included

It established the geographical, political and administrative jurisdictions of the Buganda kingdom at large. It also placed restrainants on the expansion tendencies of Buganda by clearly defining the extent of its territory.

Thirdly it defined the extent to which the jurisdiction of kabakas government when in term of legislative judicature political and administrative competence. This was brought out in the case of ***Kazaraine v The Lukiko***

[22]where the applicant Kazaraine was convicted for inciting the people of Buyaga and bugaizi not to pay taxes to the kabaka government and for obstructing the chiefs from carrying out their rightful duties of revenue collection. This was brought before the high court and the jurisdiction was to whom the two counties and vested in either the central government or the Buganda government. The agreement also confirmed the kingdom as the primary entry in Uganda for the control of the rest of the protectorate territory.

Article 1 of the 1900 Buganda agreement made numerous effects that made the Baganda to consider it a voidable contract of agreement and these include;

The question of Lost counties of Buyaga and Bugangayizi, this was sparked off by the Case of *Kazaraine v The Lukiko*, that caused tension and suspicition on who is supposed to own Buyaga and Bugagaiyizi "kibale region"[23]. On account of these two factors, Bunyoro succeeded in driving the Baganda back, only to find that their final victory was frustrated by the arrival of the British who protected the Baganda with riffles and Maxim guns. The Baganda, who were being seriously pressurised by the Banyoro, had gone into alliance with the British who had come to colonise the Nile valley and were looking for an ally. The first operation the Anglo-Ganda alliance mounted was against their most serious threat, the Bunyoro-Kitara Kingdom. This was in December 1893 when Col. Colville led a full military campaign against Kabalega and the Kingdom of Bunyoro. After suffering a series of defeats, Kabalega was driven from his kingdom and forced to take refuge in LangoS in 1894.

As a reward for assistance against the Bunyoro, Col. Colville in the early part of 1894 promised the Baganda chiefs that all Bunyoro territory south of River Kafu would be incorporated into Baganda

[22] [1963] E.A 472

[23] EA1963

This was roughly the area comprising Buyaga and Bugangazi (or Bugangaizi as Bunyoro call it) northern Singo, Buruli and the formerly semi-independent area of northern Bugerere, which had been part of Bunyoro territory. Col. Colville was forced by illness to leave Uganda before implementing this promise.
However, when E.J.L. Berkely, who succeeded Colville was in 1896 appointing a Munyoro to be chief of this area, the Ganda chiefs present reminded him that his predecessor had pledged the area to be part of Buganda. Berkely consulted the Foreign Office, which instructed him to implement the promise.[24]

The incorporation into the Buganda Kingdom of this territory, which was clearly part of Bunyoro with Banyoro inhabiting, was so blatantly unjust that two British officers then serving in Bunyoro, Pulteney and Foster, resigned their posts in protest against the decision.
Banyoro never accepted the situation and the loss was to become the festering “lost counties” issue that was a subject of many deputations by the Kingdom of Bunyoro to the British throughout the colonial period.

This is what Berkely wrote to the Colonial Secretary on 19th November 1896: “The annexed provinces in becoming part of the Kingdom of Buganda, must of course recognise the sovereignty of the king of Buganda, the supremacy and authority of the chiefs selected to govern them and they must understand that henceforth they are subject to all laws, regulations, obligations as to local taxation and tribute, etc that are in force in the other parts of the kingdom.[25]

At the same time, however, that these provinces became part of the Kingdom of Buganda so would their native inhabitants become Waganda, and as such,

[24] Gariyo Zie: the Press and Democratic Struggles in Uganda, 1900 – 1962 in Uganda FEP Book 12, Vienna, 1999, page 405.
[2525] Gariyo Zie: the Press and Democratic Struggles in Uganda, 1900 – 1962 in Uganda FEP Book 12, Vienna, 1999, page 405.

entitled to all public and private rights of Waganda in any other part of the kingdom."

The obvious interpretation of Berkely's words is that since these Banyoro had been transferred into the administrative sphere of Buganda, they were now Baganda. The Banyoro could not accept this and began putting up resistance.

Matters did not get any better for the colonial administrators when they found out afterwards that the lost counties were home to all the tombs of all dead kings of Bunyoro. They dealt with this embarrassment by allowing the Bunyoro Native Government to appoint a special salaried chief (the Mugema) to reside in Buganda and take care of the tombs.

The Banyoro in the lost counties were subjected to various forms of cultural oppression. They were not allowed to engage in Kinyoro dances. This kind of oppression was brought into the open by the area Member of Parliament, Mr N.K. Rugemwa, before the Uganda Constitutional Conference in 1961. He claimed that "if the Banyoro do anything in a way different from and practiced by Baganda, they are liable to be prosecuted for breach of Ganda customary law. These breaches included dancing and singing in their Kinyoro traditional style."

About this, Omukama Tito Winyi expressed himself in the following words: "Dancing in Kinyoro style is illegal, and all dancing must be in Kiganda style, which is foreign to the Banyoro people."

The use of Lunyoro, the language of Banyoro, was discouraged. In 1960, the Mubende Bunyoro Committee (MBC), a pressure group, noted: "The suppression of our mother tongue, Lunyoro, hurts beyond imagination. Our children are taught in a foreign language in the very first year of their education, and our language has been banned in courts, offices, and churches in addition to schools."

The Banyoro were being forced to register the births of their children with Kiganda names. In 1958, the Omukama addressed this issue thus: "...when the Banyoro go to register births at Gombolola (sub-county) offices, they are compeleld to enter in the register Luganda names for their children, and register their clans according to the Kiganda clan system. The Banyoro were also discriminated against in the award of scholarships.

A British MP, Eirene White, who went to the area in 1957, reported to the House of Commons and it was recorded in the House of Commons Hansard of May 6, 1957, page 738-739 that the only way a Munyoro from the lost counties would get a scholarship is declare himself/herself a Muganda.

The following year, in a petition to the Queen, Omukama Winyi claimed that only "pure Baganda" could be considered for a bursary or scholarship. "If an applicant for such a scholarship state on his application form that he is a member of any other tribe than Baganda, his application is not considered," he said.

Between 1931 and 1958 various Bakama of Bunyoro petitioned the British government nine times to have the matter investigated but their petitions were simply ignored. Prior to that in 1921, the MBC had been formed to: To fight for the return of Omukama Kabalega, to recover Banyoro land from Buganda which was registered as Mailo, Crown and Estates land, to reinstate socio-cultural freedom to Bunyoro society and to resist non-Banyoro rule, exploitation and other forms of subjugation.[26]

The group petitioned the Colonial Secretary in 1951, 1953 and 1955. The Legislative Council member for Bunyoro, Mr George Magezi, also petitioned in 1955. The British responses to the petitions took rather standard forms as exemplified by the response of two officials.

In 1957 Governor Crawford, for instance, said: "...nothing can be done about that now" and later in 1931 the Secretary for the Colonies argued "it is a long

[26] Garaner Thompson: Governing Uganda, Fountain Publishers, Kampala, 2003

time [since the lost counties were incorporated into Buganda] and this matter was settled during the time of fighting, so we can not now do anything further in the matter. The persistence of the petitions annoyed some British officials.

In 1955 C.H. Hartwell, the Chief Secretary, was exasperated enough to burst out "...in a matter of this kind there must be a finality, and in this case, it must be accepted that the final decision has been taken. Eventually the matter came before the Constitutional Conference, which was preparing for independence in London in 1962.[27]

The matter was discussed and on June 27, as the Buganda delegation was walking out of the Conference, having sensed the dominant mood, the Colonial Secretary, Mr Maudling, delivered the verdict of the British government.

Buyaga and Bugangazi were to remain part of Buganda while being administered by the Central Government, and "after not less than two years, the National Assembly shall decide on the date for a referendum - in which the people of the counties will say whether they prefer to be in Buganda or Bunyoro, or remain under the Central Government." After giving Buyaga and Bugangayizi "**Bunyoro's territories"** to Buganda as agift, for helping the British to defeat Bunyoro. this tus called for the1961 Lacaster and 1962 Marlborough conference was formed to solve the question of the lost counties but in vain, only talked about how Uganda was going to attain the independence on 9th October 1962. [28]

The **Ugandan Constitutional Conference**, held at Lancaster House in the autumn of 1961, was organised by the British Government to pave the way of Ugandan independence

[27] Evolution of constitutional law, public law and Government by Prof. Dr. G.W. kanyeihamba

[28] See: Nsibambi AR: the Monarchisation of the Kyabazinga and the passing away of Traditional Rulers in Uganda. In Nigeria, Behavioural Sciences Journal, 2, 1979.

The Conference opened on 18 September 1962 and concluded on 9 October. It was convened to discuss the Report of the Uganda Relationships Commission, which had been tasked with "considering the future form of government best suited to Uganda the question of the relationship between the Central Government and the other authorities in Uganda" [29]and had reported in June. [30]In addition to UK Government Ministers (including the Secretary of State for the Colonies, Ian Macleod), the conference was attended by representatives of the colonial administration (headed by Sir Frederick Crawford, then Governor of Uganda), Baganda, the Democratic Party, the Uganda People's Congress (UPC) and others. Milton Obote and the honourable A.G. Mehta were the lead representatives for the UPC.[31] The Uganda government led by DP leader, Ben Kiwanuka, strongly opposed the suggestion by the minister Commission arguing that indirect elections were against the franchise of the people of Buganda. In a very lengthy discussion, Ben Kiwanuka noted that not only was the provision a recipe for instabilityand unpopular government, but that it was only intended to appease the kabaka and Buganda delegation.

The main issue facing the conference was the status afforded to the different historic kingdoms of Uganda (and in particular the Kingdom of Buganda) in exchange for them recognising the existence of the new state of Uganda, of which they would only be one part. In addition, the Kingdom of Bunyoro only agreed to participate in the Conference if the disputed status of the "lost counties" was discussed. When, during the Conference, Macleod suggested that the referendum envisaged by the Relationships Commission could not

[29] Apter, David E. (3 April 2013). The Political Kingdom in Uganda: A Study in Bureaucratic Nationalism. Routledge. p. 403. ISBN 978-1-136-30757-7

[30] Mukholi, David (1995). A Complete Guide to Uganda's Fourth Constitution: History,Politics, and the Law. Fountain Publishers. pp. 10–11, Appendix 1. ISBN 978-9970-02-084-3.

[31] *England), Uganda Constitutional Conference (1961: London (1961).* Uganda: Report of the Uganda Constitutional Conference, 1961 and text of the agreed draft of a new Buganda agreement initialled in London on 9th October, 1961. H.M.S.O. OCLC 14210279.

proceed given the lack Bugandan support, instead proposing the establishment of a further Commission of Privy Councillors (the Molson Commission), Bunyoro's delegates walked out.[32] Finally, the delegates were informed that a commission of the Privy Council would be appointed to advise on how the issue could be resolved. In Jan. 1962, a commission was appointed with Lord Molson as its chairman to investigate and make recommendations on the matter.

Apart from these contentious issues, the conference was able to decide most of the issues involving the constitutional make up the executive legislature and judiciary and the operation of these organs. The conference ended on 8th October 1961 with an agreement that independence would be granted exactly a year later on 9th October 1962. Aside the constitutional matters that were resolved, the conference also produced several interesting developments. The most important was the alliance [marriage of convenience] between UPC and Buganda. The merger came mainly because UPC had supported the kingdom on the issue if 'indirect 'elections leading it to believe that it had UPC on its side stemming from this development was the realization by Buganda that the only way to secure its interest would be the creation of a political movement devoted to promotion of such interest. The movement was born and came to be known as kabaka yekka [king alone]. [33]This KY movement would be mobilized for the next elections in 1962 with Buganda this time fully participating, and did in effect register success for UPC with 37 to DP's 24 and KY's. UPC and KY would form a coalition government which guaranteed UPC a firm majority in the National Assembly.

Second constitution conference opened on 2ndJune 1962 under the secretary of state [Maudling] with the governor of Uganda, delegation from UK,

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[32] Dumbar, A. R. (1965). "A History of Bunyoro-Kitara" (PDF). Oxford University Press. pp. 189–193. Retrieved 17 June 2017

[3333] Evolution of constitutional law, public law and Government by Prof. Dr. G.W. kanyeihamba

representatives of kingdoms, districts, urban authorities and the opposition DP. The work of the conference was mainly done by three committees: -

(a) The constitutional committee;

(b) Citizenship committee, and

(c) Fiscal committee deal with matters of taxation and finance.

By this time, the minister committee had submitted its report and a new constitution had been prepared on 1st march 1962. Nonetheless, the matters that had not been settled a lancaster were stilloutstanding that is:

(a) Status of the three other kingdoms; Ankole, Bunyoro, and Toro. Only the question of Buganda had been addressed. These too wanted a federal status. They were also accompanied by the delegation from Busoga [led by kyabazinga] who argued that they too had traditional institutions and so should similarly get federal status.

(b) The 'lost counties' issue. The minister commission had visited from jan- may1962 to make recommendations on the counties [the seven were buyaga, bugangayizi, buruli, bulemezi, bugerere, buwekula, and ssingo]. the commission recommended that two of these counties [buyaga and bugangayizi] be transferred to Bunyoro before independence with the five remaining with Buganda

At the Marlborough house, outstanding matters including the framework of an independent Uganda were generally settled. The problematic issued would remain however that of the 'lost counties. The Bunyoro delegation argued that there was no reason why only two of these counties should be returned. On the other hand, the Buganda delegation argued that the peoples of these counties were settled, happy with Buganda and there was no need therefore to upset the states affairs. This caused statement and because of this, the governor was compelled to take a stand on the issue as;

(a) There would be no immediate transfer of authority;

(b) Administration of the two counties (in question) would be transferred to the central government.

(c) After not less than 3years from the date of transfer, would decide onthe date for holding the referendum for the two counties in which the electorate would be asked to make a choice amongst;

The referendum would in effort be the deciding factor on the fate of these counties. The Prime Minister Obote accepted responsibility for administering the referendum. On the last day of the conference, the delegation of Bunyoro declared that the decision made was unacceptable and withdrew. The report was therefore drafted in their absence. [34]Although Buganda did not withdraw, it also declared that the decision was unacceptable. In effect, the lost counties issues remained outstanding. The conference ended on 29thJune 1962 with the various parties of delegations) agreeing that the decisions that had been made provided a firm foundation for progress towards independence. The legal instruments that gave effect to the Marlborough decisions were;

1) Independence act if august 1962 which stipulated that Uganda would become independent on 9th October 1962.

2) Uganda independence order in council of 2nd October 1962 which had the independence constitution appendix as a schedule.

Thus, on 9th October, the union jack was lowered for the last time and the new flag for the independence of Uganda was raised. The1962 constitution had been subject of debate, with some politicians arguing that it emphasized divisions, parochialism at the expense of national unity. Scholars like Prof. kanyeihamba consider the 1962 constitution as having hampered the power of government by placing many obstacles in its path. Others have argued that

[34] Evolution of constitutional law, public law and Government by Prof. Dr. G.W. kanyeihamba

the constitution did not go far enough in decentralizing power and authority and that its problem was too much power in central government. [35]Joseph kasaraine vs. the lukiiko [1963] EA 472. The applicant mr. kazaraine was convicted for inciting the people of buyaga and bugangaizi not to pay taxes to Kabaka's government and abstracting the chiefs from carrying out their rightful duties of revenue collection. The issue was to whom the jurisdiction over the 2 counties was vested as between the central government and Buganda government. Reference may be made to the second constitutional conference which had directed that the 2 counties should be vested in the central government and so it would obviously follow that the later was entitled to exercise the jurisdiction over the territory. The court would let Buganda emerge jurisdiction more out it seems of a desire not to upset the political set up given the volatile character of the matter, and in any event a referendum was scheduled that would resolve the issue, kazaraine's case is important for a number of reasons.

i) It underpinned the tensions in the relations between Buganda and the 2 counties

ii) It portrayed the confusion which the 1962 constitution had brought about with respect to an issue that was not resolved and independence

iii) It demonstrated the phobias which the fatal arrangements of the 1962 constitution.

Referendum of the lost counties, 1964. Between 1962, the Kabaka's government had labored to justify why the counties should remain in Buganda.[36]

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[35] Evolution of constitutional law, public law and Government by Prof. Dr. G.W. kanyeihamba

[36] Evolution of constitutional law, public law and Government by Prof. Dr. G.W. kanyeihamba

i) The endowment of Buganda than Bunyoro that the 2 counties would benefit more under Buganda

ii) The benevolence and non-sectarianism which had characterized the Kabaka's rule.

iii) The undesirability of upsetting the admin. Arrangement that had existed for such a long period

iv) The development of the counties had been secured under Buganda's rule. Further, there were concerns that a change of admin. Would adversely affect Buganda and owners. The central government nonetheless went ahead with the referendum which was held on 4th November 1964. The 2 counties overwhelmingly voted to return Bunyoro. Kabaka Muteesa II as president was supposed to sign the instruments confirming transfer but refused to do so. Obote as the prime minister put the issue before the national assembly amends through the constitution of Uganda, the territorial transfer was confirmed.[37] The Buganda government appealed to both the high court and Privy Council and lost. The referendum was the final nail in the upc- ky coffin marketing the death of the coalition.

v) There was widespread hostility between Buganda which would gain magnitude. For Obote and UPC, the referendum was boost, and show that they would no longer be held a ransom on Buganda'sdemand. Several KY mps were in factpersuaded to cross to UPC undermining the strength KY. Similarly, several members of the opposition DP also crossed over and the biggest coup in this regard was Basil Bataringaya (who became minster

[37] See: Proceedings of the Report of the Hancock Constitutional Commission, Government Archives, Entebbe.

for internal affairs). UPC was thus stronger than ever to enable the government to control national assembly.

vi) The problem of governance and autocratic tendencies would become a feature of the early years of independence the partner of leadership during the colonial period had emphasized the omnipotence of the ruler and the insubordination of the ruled. That legacy would manifest its self after attainment of independence. The post-independence rulers merely stepped into the shoes of their predecessors leading to a new form of autocratic rule. Apollo Obote exemplified this kind of new African leadership that even from the earliest days of independence autocratic tendencies had gradually begun to crip into government both in terms of disrespect of the constitution of the exercise of excessive powers. In the regard, where the constitutional president obstacles, it was then simply bypassed and this tendency was illustrated in a number of cases.

In the recommendation of Muster Commission that was chaired by Munster Earl in 1962, Buganda had refused to accept the referendum as had been recommended by Munster commission. The Munster Commission's Report contrasts greatly with an earlier Report of the Constitutional Committee headed by Professor Hancock.[38] The former recommended a federal and semi-federal form of government. The latter basing their opinion on the findings of their report recommended that a unitary form of government would be more suitable for the country. The Constitutional Committee, which comprised representatives of all communities in Uganda saw and interviewed more Ugandans than the Munster Commission did. Therefore, there can be little doubt that in appointing the Commission, the British had already made up their minds as to the form of government they intended to introduce in Uganda. Munster's recommendations are only interesting for

[38] See: Proceedings of the Report of the Hancock Constitutional Commission, Government Archives, Entebbe.

their contradictions. [39]On the one hand, Uganda was to be a single democratic state with a strong central government. On the other, Buganda was to be a federal state within Uganda. Buganda was not only to have the same semi-autonomy she enjoyed then but she would enjoy more privileges come independence. The members of the Buganda Lukiiko were to be directly elected but once elected, Buganda would decide whether Buganda representatives to the Legislature Council were to be directly elected as well or appointed by the kingdom.[40] One good thing the Munster Commission recommended was the holding of a referendum in two of the "Lost Counties" where the evidence had showed that the majority of the population were Banyoro.[41] The two were Buyaga and Bugangaizi. The 'lost counties' were formerly part of the Bunyoro territory which the colonial government transferred to Buganda as a gift for the assistance it received from Buganda in the war against and defeat of King Kabalega of Bunyoro. For years Bunyoro had tried to have the lost counties returned to it without success.[42] In accordance with the agreement reached at the previous conference, a Commission under Lord Molson had been appointed to study and report on the situation in the Lost Counties. The Commission did its work from January 1962 and reported in May the same year. The Commission's recommendation was that two of the "lost counties," Buyaga and Bugangaizi should be transferred to Bunyoro before independence and that the remainder of the counties should remain part of Buganda.[43] Neither Bunyoro nor Buganda was willing to accept this recommendation. The conference had no visible solution either. In the end, the British Secretary of State advanced

[39] Incidentally, the majority of Ugandans lived outside the areas whose indigenous leaders had signed these agreements.

[40] See: Correspondents Mawagi and Kizito's letters in the Uganda Argus, 11 March 1959.

[41] Evolution of constitutional law, public law and Government by Prof. Dr. G.W. kanyeihamba

[42] See: Kwebiha's (former Bunyoror Prime Minister) letter to the Governor of 27 November 1961 protesting about the New Agreement of that year purported to keep the lost counties in Bugand

[43] Uganda Argus. 6 November 1964

his own solution. There would be no transfer of the two counties to Bunyoro. Instead, they would be transferred to the Uganda Central Government which would administer them, provided that after two years, the National Assembly would decide, on a date for a referendum, to be held in the two counties, so that the inhabitants there would determine their future. The Prime Minister Milton Obote duly accepted this responsibility on behalf of the Uganda Government amid protests from both the Bunyoro and the Buganda delegations. Buganda persisted in her refusal to accept a referendum, the referendum was eventually held and its results on 5 November 1964 showed that the two counties had decided overwhelmingly to rejoin Bunyoro. In the jubilation that followed the transfer, Bunyoro appeared to have forgotten that the two were not the only "lost counties." On the other issues, the conference reached general agreement and an outline of the Independence Constitution was formulated and agreed upon. Uganda was to attain independence on the 9 October 1962.

Buganda refused to accept a referendum as had been recommended by the Munster Commission and, accepted by the British Government. The Secretary of State then proposed a compromise. He suggested that a Commission of Inquiry, composed of Privy Councillors be appointed to investigate and study the problem specifically. On her part, the Bunyoro kingdom, insisted that the problem be solved by the Conference, and when she realised that the Conference was undecided, her delegation walked out in protest.[44]

In their absence, the British compromise was accepted. However, most other delegates expressed the view that the fate of the "Lost Counties" must be determined, by the British, before the granting of selfgovernment. But as events were later to show, this did not happen. At the end of the Conference, it appeared that all parties except Bunyoro and the Democratic Party, were

[44] See: Kwebiha's (former Bunyoror Prime Minister) letter to the Governor of 27 November 1961 protesting about the New Agreement of that year purported to keep the lost counties in Buganda

satisfied with the Conference's conclusions. Buganda got her federal status; the other three kingdoms and Busoga got a semi-federal status and the rest were to be unitary in relation to the central government. The Uganda People's Congress came out satisfied because her friendship with Buganda was growing and would soon blossom into a political marriage of convenience.[45]

The lost counties were left in the hands of the central government control. The 1962 constitution granted Buganda a federal autonomy, but it did not provide a resolution to a territorial dispute surrounding the counties of Buyaga and Bugangaizi. The two regions had been annexed by Buganda from the Kingdom of Bunyoro around the turn of the 20th century with the United Kingdom's consent. Bunyoro had demanded the return of the "lost counties" before independence, but this did not occur. On 25 August 1964, Obote submitted a bill in Parliament that called for the matter to be settled through a referendum.Mutesa and Obote held opposing stances on the issue; the former wished for the territories to remain with Buganda, while the latter wanted them to be returned to Bunyoro. In an attempt to sway the vote, Mutesa arranged for large numbers of his subjects to settle in the counties. Obote foiled his plan by decreeing that only persons registered in the area for the 1962 elections could participate in the referendum. Mutesa then vainly attempted to bribe the electorate. The referendum was held on 4 November 1964, and the voters chose by a wide margin to return to Bunyoro.

The result of the vote bolstered Obote's support in Bunyoro and created outrage in Buganda. Baganda rioted and attacked ministers of their kingdom's government. On 9 November Michael Kintu, the Kattikiro (Prime Minister) of Buganda, resigned and was replaced by Jehoash Mayanja Nkangi Conservative Baganda chiefs such as Amos Sempa increasingly encouraged Mutesa to resist Obote. When Obote

[45] It was decided that the matter would be decided by referenda in the lost counties after the attainment of independence.

presented the necessary documents officiating the transfer of jurisdiction for Mutesa to sign as President, the latter refused, declaring, "I can never give away Buganda land." Obote signed in his place, but relations between the two men were strained by the ordeal. The transfer took effect on 1 January 1965, the question of Buganda's position in relation to Uganda is without doubt traceable to the period leading up to independence – the minister report 1961 and the conferences. The federal status of Buganda as a major aspect of the 1962 constitution created a tension in which the demarcation of authority becomes all too confused. The potential to flare-up was always manifest in particular as regards to matters of jurisdictionand finance and revenue.Cf. Kabaka's government and anor vs. AG of Uganda and anor PC app no. s.6 of 1964, AG of Uganda vs. Kabaka's government [1965] 291 coming up in 1965 in the wake of the lost counties referendum a year earlier. The case highlighted how fragile the constitutional framework of 1962 constitution the federal relations of Buganda in a unitary Uganda law was if the lost counties largely marked the end of the upc-ky alliance, this case damned the 1962 constitutional arrangements and spelt its doom. [46]The case involved the distribution of finances between the central government and Buganda government, and how much in a block grant Buganda entitled from the central government. The fact that the matter would up in court and could not be amicably solved between the 2 parties demonstrates how hostile their relationship had become. Thus, leading to the 1966 kabaka crisis

Note until the land commission of 1992 that was chaired by the former chief Justice Benjamin Odoki, the Baganda's interenst was still in the lost counties that inturn brought the aspect of the Kibaale "ghost landlords" , who were compensated and thus the Baganda where removed completely from the lost counties.

Article 2 of the 1900 Buganda agreement. The Kabaka and Chiefs of Uganda hereby agree henceforth to renounce in favour of Her Majesty the

[46] Mugaju J: The Illusion of Democracy in Uganda – 1955-1966, op.cit. page 6.

Queen any claims to tribute they may have had on the adjoining provinces of the Uganda Protectorate.

Pursuant to *Article 2* of the Buganda Agreement, 1900, Buganda lost the right to collect tribute from vassal kingdoms with the British not only taking over but also introducing taxes such as a Hut and Gun Tax and later Bicycle Registration Tax among others. The Kabaka was restricted to only fifty guns compared to Mwanga who as a Kabaka mobilized over two thousand guns in his revolt. It is not in dispute that up to and including the year 1961, the Protectorate Government controlled the expenditure of all Governments, administrations and other authorities in Uganda, and that, with certain exceptions with which we are not immediately concerned, all revenues were collected by the Protectorate Government. Financial provision in aid of the activities of the Governments, administrations and other authorities was made by the Protectorate Government by means of recurrent grants made for specific purposes which, generally speaking, were to be applied only for those purposes. The court broadly noted in the case of *The Attorney General of Uganda v The Kabaka's Government*[47] that, it may be said that the Protectorate Government had therefore complete control over the revenues and expenditure of all subordinate Governments and administrations. Thus, the Buganda Government, no less than the other governments, was subject to that control.

In addition to that, looking at Article 3 which stipulated that Buganda would rank as a province of equal standards with any other provinces in the protectorate this was intended to give Buganda an enhanced position that could eventually lead to struggles between her and the rest of Uganda and this can be evidenced from 1953 when Buganda bacame involved in struggles to enhance her position and defend her Interests or assert her.

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[47] EA1963

Buganda was not ready to be equal as other provinces like Busoga, Toro which were economically backward and hence started claiming for federalism by Muteesa II making the 1953 – 55 Kabaka crisis inevitable. Significantly the 1953 reform would demonstrate the dependence of the colonial government on the legal cooperation of the Kabaka with the ascendancy of Mutesa II as Kabaka, his strength was bound to be the cause of friction between the Buganda government and the colonial government. Educated at Cambridge and already offended that he was not treated with honour at the coronation of Queen Elizabeth II in 1952, the reliance on Mutesa II to promote colonial government policy was unlikely to be a happy cirmustance. Nonetheless Mutesa II was keen to support the March 1953 reform but where the Cohen policy in its strong belief that Uganda must develop as a unitary state threatened the tribal loyalties. This would result in tribal institutions including the Kabakaship declining in importance. This factor and concern would spark off the crisis in Buganda that came to be known as the Kabaka crisis of 1953 – 1955.

The Kabaka crisis of 1953 – 1955 was sparked off by a speech made on 30th June, 1953 by the Secretary of State for the colonies in which he referred to the possibility.[48] "As time goes by of larger measures of unificationand possibly still larger measures of federation of the whole East African territories."

This pronouncement caused adverse public reaction on Buganda. In a seriously worded letter, Kabaka Mutesa II urged that the affairs of Buganda be transferred from the colonial office to foreign office and that the time table be prepared for the independence of Buganda. In particular, they later rated that; "The Kabaka and his ministers could no longer feel happy about Buganda's position under 1900 agreement. Apart from the danger of federation, they considered the policy of developing aunified system of government along parliamentar lines which would result in Buganda becoming less and less important in the future." The Kabaka's and Buganda's

[48] Constitutional history and politics of East Africa: Pro. G.W. Kanyeihamba

demands were for more than a challenge to any proposed federation as they meant a complete break with governor's Cohen's vision of a unitary state in Uganda. The Kabaka's letter would only reaffirm Buganda's separatist tendencies and assertion of claims to a special status that were arguably evident since 1902. During the proceedings of a case filed in 1994 to challenge the deportation of the Kabaka (Mukwaba and 2 other v Mukubira and 4 other). The treasurer is recorded as having stated: "After some two or 3 years after the agreement, the divisions (dependencies) into provinces to rank as being equal to Buganda province. As regards administration we are of equalrank but otherwise, we the Buganda kingdom is independent."

The 1955 Buganda Agreement (gave Buganda a format of electing representatives to the Leg co.) be until May 1955 that Muteesa II was allowed to return, with a new Buganda agreement of 1955 in place. By the time the kabaka was deported and deposed, his popularity had suffered mainly as a result of the 1940s uprisings in which chiefs and ministers had been targets. The Kabaka's stand was thus not only a challenge or British policy, but an effort to consolidate loyalties of this own people. Paradoxically, buy taking a stand against the colonial government Muteesa II was perceived with in and outside Uganda as nationalist. The heroism was further enhanced by virtue of the fact that in settling the kabaka crisis and drawing up of a new agreement, the Buganda agreement of 1955, in which the colonial government made a major concession to the kabaka on the issue which had been the cause of his deportation. thus, in the preamble of the agreement, it was provided;

"her majesty's government has no intention whatsoever of raising the issue of east African federation either at the present time while the local public opinion on this issue remains as it is at the present day of signing and recognizes accordingly that the intrusion of Buganda protectorate in any such confederation is outside the realm of practice politics at the present time or while public opinion remains as it is" Her majesty's government also undertook to consult with the government of Buganda on the issue of

federation. in this way, the 1955 agreement put to rest the question of federation, thus upholding the Kabaka's original objection. The main feature of the 1955 agreement was;

a) It was the constitution for Buganda. The Buganda government was transformed in structure, if not in spirit, into a constitution monarchy. The framework was thus established within which the objective of a united, if not unitary Uganda government along parliamentary lines was to be pursued.

b) B) it provided for the participation of Buganda in the legislative council, with Buganda's representatives elected on a formal of indirect elections with the lukiiko acting as an electoral college. The composition was not to be altered for 6 years[49]

Muteesa II was projected as a nationalist for standing up to the colonial government; in fact, he was only protecting Buganda's sub-nationalist federalist interests. From 1955 onwar5ds, the kabaka and his government embarked on a course to ensure protection of the interests of Buganda. The separatist's tendencies of Uganda became heightened notwithstanding the formal constitutional arrangement the 1955 agreement. When the Kabaka was restored to the throne in 1955, the Buganda traditionalists under Michael Kintu won power and composed the biggest number of supporters in the Lukiiko. Leading opponents of the traditionalists were expelled from the Lukiiko and less enthusiastic chiefs were summarily dismissed from their posts. Political parties were declared alien to Kiganda customs and the clan leaders issued a statement condemning any Muganda who joined political parties. The 'Kintu' administration refused to co-operate with the Protectorate government and demanded that powers exercised by the Governor be transferred to the Kabaka. It has been noted that in 1958, the

[49] See especially article 7 and the 2nd schedule (which provides for regulations on elections anciliary to of the agreement
Katikiiro of Buganda vs. AG of Uganda [1959] EA 182.

Buganda Lukiiko rejected direct elections for the Legislative Council. As a result, from that year until 1961, Buganda was not represented in the Council. The question arose as to whether, in rejecting direct elections for the Legislative Council, Buganda had broken the 1955 Agreement by which the Kabaka had been restored to the Kingdom. The Agreement provided, inter alia, that Buganda had to be represented in the Legislative Council by representatives of whom at least a quarter were directly elected. It was further provided that Buganda's future representation would be under a system of direct elections.

In 1958 and 1961 legislative council election – boycott and demand for indirect method of election. Demand for independent Buganda as a state and the federal status and indirect elections to national assembly at the Lancaster conference, 1961.

HARDENING OF BUGANDA AS TO ITS STATUS AND INTERESTS FROM 1958 ONWORDS ON ASPECT OF FEDERALISIM TENDENCIES.

While the wild committee was making its consultations, Buganda kept on hardening as its perceived status in the protectorate. With the 1958 boycott, the hardliner elements comprising the kabaka, chiefs and landlords began to map ways of ensuring that Buganda's autonomy was secured. The boycott of elections had its self been signed to put pressure on the colonial government to give into the demands of the kingdom. A movement began to grow in Buganda with its primary goal to secure the protection of Buganda's interests against the designs of the nationalists. The culmination of the movement's function was the submission Ist November 1960 of a memorandum to her majesty, the queen of England stating as follows;

a) British protection over Buganda by the 1900greemnet should be terminated and

b) As a consequence of the termination of the status, plans should be immediately made for an independent Buganda. Amongst other things the plan would include;

i) Establishment of friendly relations between Buganda and HMG and the exchange of ambassadors and high commissioners.

ii) Buganda would remain in the common wealth and seek membership of the UN;

iii) All powers previously exercised by the governor to be vested in the kabaka and his government;

iv) Buganda would have its own armed forces with the Kabaka as commander in chief.

v) All institutions of learning in Buganda with the exception of Makerere College would fall under Buganda jurisdiction.

vi) Makerere College would fall under the jurisdiction of Buganda.

vii) Arrangements for the independence of Buganda should be complete by December 1960. On 1st January 1961 the lukiiko declared the independence of Buganda. Although the declaration was never a reality, the message was very clear.

This was sharply brought home with the preparations for the 1961 elections. Although the colonial government went ahead with the elections, the Kabaka's government directed its follower not to register for the elections. Indeed, by thetime registration was closed, only a handful of mainly dp supporters had actually registered. In effect, Buganda had organized another boycott which was successful. In political terms, the boycott marked the death of Dp in Buganda because dp had defied the boycott. Ben kiwanuka was portrayed as anti- Buganda luganda and as a man who did not respect the kabaka. It was not helped that Ben kiwanuka was also of catholic faith.

On the other hand, UPC gained from the boycott because they had not decided not to fill in candidates in Buganda. The Buganda government therefore felt that there was a possibility of good relations with Upc's Apollo Milton Obote, and marked the onset of the UPC – Buganda alliance later cemented during the Lancaster conference.

The wild 1961 and minister report 1962 laid out the broad parameters for the debate on the constitution for the independent Uganda. In fact, in certain respects, the 2 reports foreclosed debate, while in others they opened up issues to incorporate new dimensions. Indeed, it can be said particularly of the munster report that it provides a draft constitutional report for Uganda. At the opening of the Lancaster conference in September 1961, the secretary of state for colonies expressed the view that as far as relations with Buganda were concerned, the minister proposals were so far the best of not the only way of securing the co-operation of the people of Buganda in the creation of an independent Uganda.

The question of Buganda's position in relation to Uganda is without doubt traceable to the period leading up to independence the munster report 1961 and the conferences. The federal status of Buganda as a major aspect of the 1962 constitution created a tension in which the demarcation of authority becomes all too confused. The potential to flare-up was always manifest in particular as regards to matters of jurisdictionand finance and revenue. Kabaka's government and anor vs. AG of Uganda and anor PC app no. s.6 of 1964, AG of Uganda vs. Kabaka's government[50]coming up in 1965 in the wake of the lost counties referendum a year earlier. The case highlighted how fragile the constitutional framework of 1962 constitution the federal relations of Buganda in a unitary Uganda law was if the lost counties largely marked the end of the upc-ky alliance, this case damned the 1962 constitutional arrangements and spelt its doom. The case involved the distribution of finances between the central government and Buganda

[50] [1965] 291

government, and how much in a block grant Buganda entitled from the central government. The fact that the matter would up in court and could not be amicably solved between the 2 parties demonstrates how hostile their relationship had become.

UPC-KY coalition,In 1960, Milton Obote helped to establish a political party in Uganda, known as the Uganda People's Congress (UPC). The UPC aimed to erode the power and influence of the "Mengo Establishment", a group of traditionalist Baganda that led the sub-national kingdom of Buganda.[1] The Mengo establishment was plagued by rivalries and infighting, but most of its members, as Protestant Christians, were united by their dislike of the Democratic Party (DP), which was dominated by Catholics.

The DP won a majority in Uganda's first free national elections in 1961, and formed a government. The UPC and traditionalist Baganda both disliked the Catholic orientation of the DP, but were diametrically opposed to each others' ideals. Despite this, the UPC gave Grace Ibingira, a conservative member of its ranks, the responsibility of making contact with the Baganda to establish an alliance to unseat the DP. The UPC chose him for the role because he was personally acquainted with the Kabaka (King) of Buganda, Mutesa II. After several negotiations, the UPC and Baganda leaders held a conference whereupon an agreement was reached. Soon afterwards the Baganda created the Kabaka Yekka (KY), a traditionalist party that entered an alliance with the UPC.

Following the UPC's victory in the April 1962 general elections, Obote was tasked with forming a government. He became Prime Minister of a UPC-KY coalition government. The KY held mostly insignificant portfolios, while Obote obtained control of the security services and armed forces. Ibingira was made Minister of Justice. Uganda was granted independence from the United Kingdom on 9 October 1962. In 1963 Mutesa was elected President of Uganda, a largely ceremonial post. Obote supported his election with the intention of appeasing the Baganda population.

In 1964 Ibingira initiated a struggle to gain control of the UPC with the ultimate goal of deposing Obote from the party presidency. At a party conference in April he challenged the left-leaning John Kakonge for the secretariat-general of the UPC. He convinced Obote that Kakonge posed a threat to his leadership of the UPC. With Obote's support, Ibingira ousted Kakonge by two votes. He used his new position to purge the party of a number of leftists. Meanwhile, Mutesa increasingly feared that the UPC would deny his kingdom its traditional autonomy and concluded that in order to retain power he would have to garner influence in national politics. He proceeded to instruct Baganda members of Parliament to join the UPC with the goal of bolstering Ibingira's position and unseating Obote, thus allowing for a reorientation of the UPC-KY alliance that would be more favorable to Buganda. As his working relationship with Mutesa improved, Ibingira amassed a coalition of non-Baganda southerners, dubbed the "Bantu Group". Meanwhile Obote began appealing to DP MPs to defect and join his party in Parliament. He successfully convinced several to do so, including the DP floor leader. On 24 August 1964 Obote, with the UPC having consolidated a majority in Parliament, declared that the coalition with KY was dissolved.

unitarism aspect of Milton Obote and Federalism of Mutesa, this brought the aspect of relationship of Buganda and Uganda due to unanswered accrim by the 1962 constiution, this in turn made Milton Obote to attack Bulange Mengo to caputer the Kabaka Mutesa who escaped to exile .it was the Catholic oriest that made him to escape from the army of Idi Amin and thus annoyed Baganda making the first stone to the crisis of 1966

Article 4. The revenue of the Kingdom of Uganda, collected by the Uganda Administration, will be merged in the general revenue of the Uganda Protectorate, as with that of the other provinces of this Protectorate.this annoyed the Baganda who wanted the tax collected in Buganda to benefit Buganda region because they were collecting the lion share on the total tax,

thus made Baganda to cause the 1953-55 crisis with grounds of federalism tendencies same also the 1966 crisis.

Article 5 of the Buganda aggrement. The laws made for the general governance of the Uganda Protectorate by Her Majesty's Government will be equally applicable to the Kingdom of Uganda, except in so far as they may in any particular conflict with the terms of this agreement, in which case the terms of this Agreement will constitute a special exception in regard to the Kingdom of Uganda. *Article 5* of the agreement was to the effect that although the general laws governing the protectorate would equally apply to Buganda, however, were they in particular conflicted with the terms of the Agreement; the Agreement would constitute a special exception with regard to Buganda. As a matter of fact, the reports of the Commissioners who later got to be baptized as governors could not supersede the Agreement.

The intention of article 5 was to ensure that Buganda did not play any special or privileged status in the protectorate in comparison to the other parts or provinces while this was latter of the agreement, the spirit of it was to in fact give Buganda an enhanced position which would eventually lead to struggles and conflicts between Buganda and the rest of Uganda which characterised the protectorate and immediate post-independent periods. Buganda became involved in struggles to enhance its position or even to assert its independence and these would become more apparent in the period leading to independence and the post independence period.

Under the ordinary rules for the construction of statutes the reports of commissioners are not admissible for the purposes of directly ascertaining the intention of the Legislature, though they may perhaps be looked at as part of the surrounding circumstances for the purpose of seeing what was the evil or defect which the Act under construction was designed to remedy. And as such, the white papers prepared by commissioners or the reports therewith were inadmissible for the purpose of construing the native treatise. This provision certainly gave the Buganda Agreement in particular a prominent

position in the shelves of the space of law in Uganda, thus showcasing the greatness of Buganda above other regions and their respective agreements.

It's of great importance to note that the First and Second Schedules to the Buganda Agreement of 1955 were given the force of law by a proclamation made under s. 2 (2) of the Buganda Agreement, 1955 and the Order-in-Council, 1955. On July 29, 1955, the Buganda Agreement, 1955 and Order-in-Council, 1955, were made. On October 18, 1955, the 1955 Agreement was entered into between the Governor on behalf of Her Majesty the Queen and the Kabaka on behalf of the Kabaka, chiefs and people of Buganda. This provided inter alia for the administration of Buganda in accordance with the Constitution set out in the First Schedule and that those provisions should have effect from the date when the Agreement was executed. The Second Schedule of the 1955 Agreement is ancillary to art. 7 of the 1955 Agreement, and contains regulations for the election of persons for recommendation to the Governor for appointment as representative members from Buganda of the Legislative Council of the Uganda Protectorate. Seeingthat the Second Schedule has been given the force of law, the court is entitled to look at, and to construe, that Schedule. If authority is needed for this proposition, it will be found in the case of *Stoeck v. Public Trustee*

Article 6 of this agreement stipulated, for the Kabaka to be recognized as the native ruler of his people "His Majesty" and to be given protection by the colonial government, saluted with10 gun shots at every ceremony, paid a salary monthly, given house hold needs and was given approximately 50 guns for protection. The Kabaka , chiefs and the people of Buganda will have to conform to the laws of his majesty the queen of England and so this acted as a tool to indirect rule and failure to cooperate with them could lead to withdraw of protection as it was seen in the case of ***Mukabwa V Mukubira 1954*** and very many other significances of this article even in the other cas of ***Nasanairikibuuka V Bertie Smith*** .There fore this article meant that the Kabaka had to become a worker of the colonialists any any disagreement

could lead to his displacement hence sealing off any hopes for independence.So long as the Kabaka, chiefs, and people of Uganda shall conform to the laws and regulations instituted for their governance by Her Majesty's Government, and shall cooperate loyally with Her Majesty's Government in the organisation and administration of the said Kingdom of Uganda, Her Majesty's Government agrees to recognise the Kabaka of Uganda as the native ruler of the province of Uganda under Her Majesty's protection and over-rule. The King of Buganda shall henceforth be styled His Highness the Kabaka of Uganda. On the death of a Kabaka, his successor shall be elected by a majority of votes in the Lukiko, or native council. The range of selection, however, must be limited to the Royal Family of Uganda, that is to say, to the descendants of King Mutesa.

The name of the person chosen by the native council must be submitted to Her Majesty's Government for approval, and no person shall be recognised as Kabaka of Uganda whose election has not received the approval of Her Majesty's Government. The Kabaka of Uganda shall exercise direct rule over the natives of Uganda, to who he shall administer justice through the Lukiko, or native council, and through others of his officers in the manner approved by Her Majesty's Government. The jurisdiction of the native Court of the Kabaka of Uganda, however, shall not extend to any person not a native of the Uganda province.

The Kabaka's Courts shall be entitled to try natives for capital crimes, but no death sentence may be carried out by the Kabaka, or his Courts, without the sanction of Her Majesty's representative in Uganda. Moreover, there will be a right of appeal from the native Courts to the principal Court of Justice established by Her Majesty in the Kingdom of Uganda as regards all sentences which inflict a term of more than five years' imprisonment or a fine of over £100.

In the case of any other sentences imposed by the Kabaka's Courts, which may seem to Her Majesty's Government disproportioned or inconsistent with humane principles, Her Majesty's representative in Uganda shall have

the right of remonstrance with the Kabaka, who shall, at the request of the said representative, subject such sentence to reconsideration.

The Kabaka of Buganda shall be guaranteed by Her Majesty's Government from out of the local revenue of the Uganda Protectorate a minimum yearly allowance of £1,500 a year. During the present Kabaka's minority, however, in lieu of the above-mentioned subvention, there will be paid to the master of his household, to meet his household expenditure, £650 a year, and during his minority the three persons appointed to act as Regents will receive an annual salary of £400 a year. Kabakas of Uganda will be understood to have attained their majority when they have reached the age of I8 years. The Kabaka of Uganda shall be entitled to a salute of nine guns on ceremonial occasions when such salutes are customary.

Even though Kabaka was given all the benefits The Kabaka of Buganda Mutesa felt embarrassed when he was studying in England, he wasn't recognised as the Kabaka or a Mornach. Same also the gunshots that where ladite to the kabaka at any ceremony was an insult because the Queen of England was saluted with 21-gun shots, Kabaka's decision was not final without the assent of the governor Andrew Cohen who was representing Her Mergesty Queen of England, thus made Mutesa to raise up with federalism affiliation hence causing the 1953-55 kabaka crisis, thus also the same factor leading to the formation of the 1966 crisis.

Article 7. The Namasole, or mother of the present Kabaka (Chua), shall be paid during her lifetime an allowance at that rate of £50 a year. This allowance shall not necessarily be continued to the mothers of other Kabakas.

Article 8. All cases, civil or criminal, of a mixed nature, where natives of the Uganda province and non-natives of that province are concerned, shall be subject to British Courts of Justice only.

Article 9. For purposes of native administration, the Kingdom of Uganda shall be divided into the following districts or administrative counties:

(1) Kiagwe (11) Butambala (Bweya) (2) Bugerere (12) Kiadondo (3) Bulemezi (13) Busiro (4) Buruli (14) Mawokota (5) Bugangadzi (15) Buvuma (6) Bwekula (16) Sese (7) Singo (17) Buddu (8) Busuju (18) Koki (9) Gomba (Butunzi). (19) Mawogola (10) Buyaga (20) Kabula

At the head of each county shall be placed a chief who shall be selected by the Kabaka's Government, but whose name shall be submitted for approval to Her Majesty's representative. This chief, when approved by Her Majesty' s representative, shall be guaranteed from out of the revenue of Uganda a salary at the rate of £200 a year. To the chief of a county will be entrusted by Her Majesty's Government, and by the Kabaka, the task of administering justice amongst the natives dwelling in his county, the assessment and collection of taxes, the up-keep of the main road, and the general supervision of native affairs.

On all questions but the assessment and collection of taxes the chief of the county will report direct to the King's native Ministers, from whom he will receive his instructions. When arrangements have been made by Her Majesty's Government for the organization of a police force in the province of Uganda, a certain number of police will be placed at the disposal of each chief of a county to assist him in maintaining order.

For the assessment and payment of taxes, the chief of a county shall be immediately responsible to Her Majesty's representative, and should he fail in his duties in this respect, Her Majesty's representative shall have the right to call upon the Kabaka to dismiss him from his duties and to appoint another chief in his stead. In each county an estate, not exceeding an area of 8 square miles, shall be attributed to the chieftainship of a county, and its usufruct shall be enjoyed by the person occupying, for the time being, the position of chief of the county.

By the Buganda Agreement, 1900, made on behalf of Her Majesty and on behalf of the Kabaka; the relationship between Her Majesty's Government and the Kabaka, chiefs and people of Buganda was further defined and

cemented. This Agreement was notably extended by various supplementary agreements. By the Uganda Order-in-Council, 1902, the Governor was made the Legislative authority for the Uganda Protectorate.

Article 10. To assist the Kabaka of Uganda in the Government of his people he shall be allowed to appoint three native officers of state, with the sanction and approval of Her Majesty's representative in Uganda (without whose sanction such appointments shall not be valid)- A Prime Minister, otherwise known as Katikiro; a Chief Justice; and a Treasurer or Controller of the Kabaka's revenues.

The Buganda's Charter of Rights also provided for the appointment of three native officers; that is the Katikiro (*Prime Minister*), a Chief Justice (*Omulamuzi*) and a Treasurer (*Omuwanika*) or controller of the Kabaka's revenue; to assist the Kabaka in the governance of his people. And it further to laid out how the Lukiiko (native Council) was to be constituted and how its members were to be appointed along with its legislative functions which included the making of resolutions in matters concerning the administration of Buganda subject to the consent of the Kabaka and the Governor. Suffice to say, the Kabaka was recognized as the 'supreme ruler' of the Kingdom. I find it of paramount importance to delve through the case of *Nasanairi Kibuuka vs. A.E. Bertie Smith*. In that case, the defendant a European, agreed to buy certain land from the plaintiff a Muganda chief. The defendant was willing to carry out his contract. But although the Governor had given his consent to the transaction, the consent of the Lukiiko was necessary before the land could be conveyed. Court held that under the Buganda Agreement, 1900, the Lukiiko had legislative powers and therefore in a case where, under the native law, the consent of the Lukiiko was necessary to the transfer of land, specific performance would not be enforced of a sale of land when such consent was shown not to have been given. This landmark decision unquestionably portrayed Buganda as a protected state in the Uganda protectorate.

These officials shall he paid at the rate of £300 a year. Their salaries shall be guaranteed them by Her Majesty's Government from out of the funds of the Uganda Protectorate. During the minority of the Kabaka these three officials shall be constituted the Regents, and when acting in that capacity shall receive salary at the rate of £400 a year. Her Majesty's chief representative in Uganda shall at any time have direct access to the Kabaka and shall have the powers of discussing matters affecting Uganda with the Kabaka alone or, during his minority, with the Regents; but ordinarily the three officials above designated will transact most of the Kabaka' business with the Uganda Administration.

The Katikiro shall be ex-officio the President of the Lukiko, or native council; the VicePresident of the Lukiko shall be the native Minister of justice for the time being; in the absence of both Prime Minister and Minister of Justice, the Treasurer of the Kabaka's revenues, or third minister, shall preside over the meetings of the Lukiko.

The kabaka's position was to appoint and the Governor to vet and same also to dismiss this made the king to lack control of his own minister, thus leading to the out break of the 1953-55 kabaka crisis on grounds of federalism.

Article 11. The Lukiko, or native council, shall be constituted as follows:

In addition to the three native ministers who shall be ex-officio senior members of the council, each chief of a county (twenty in all) shall be ex-official. Before the colonial era, Buganda was an autonomous State socially, economically and politically with a king who was vested with supreme powers. However, upon the signing of the Agreement, Buganda was stripped of its independence; for example, its revenue was to be collected in the general revenue of the protectorate. Pursuant to *Article 11* of 1900 agreement, the Kabaka had to share his powers of decision making with his chiefs pursuant to the *Native Authority Ordinance*, which vested some administrative mandate to the chiefs. Needless to say, all the powers exercised by the Kabaka were now subject to the Protectorate Government. In the case of *Rex vs Crewe Ex. P. Sekgome* the British Court of Appeal held that by virtue of the

Foreign Jurisdiction Act, the crown's powers in one of its protectorates could not be legally challenged because it was an Act of state. These judicial pronouncements propelled the Kabaka at one time to lament during the Bataka- peasant grievances, that his position was so precarious that he was no longer the direct ruler of his people.

In addition, the Kabaka shall select from each county three notables, whom he shall appoint during his pleasure to be members of the Lukiko or native council- The Kabaka may also, in addition to the foregoing, appoint six other persons of importance in the country to be members of the native council. The Kabaka may at any time deprive any individual of the right to sit on the native council but in such a case shall intimate his intention to Her Majesty's representative in Uganda, and receive his assent thereto before dismissing the member.

The functions of the council will be to discuss all matters concerning the native administration of Uganda, and to forward to the Kabaka resolutions which may be voted by a majority regarding measures to be adopted by the said administration. The Kabaka shall further consult with Her Majesty's representative in Uganda before giving effect to any such resolutions voted by the native council, and shall, in this matter, explicitly follow the advice of Her Majesty's representative.

The Lukiko, or a committee thereof, shall be a Court of Appeal from the decisions of the Courts of First instances held by the chiefs of counties. In all cases affecting property exceeding the value of £5, or imprisonment exceeding one week, an appeal for revision may be addressed to the Lukiko. In all cases involving property or claims exceeding £100 in value, or sentences of death, the Lukiko shall refer the matter to the consideration of the Kabaka, whose decision when countersigned by Her Majesty's chief representative in Uganda shall be final.

The Lukiko shall not decide any questions affecting the persons or property of Europeans or others who are not natives of Uganda. No person may be

elected to the Lukiko who is not a native of the Kingdom of Uganda. No question of religious opinion shall be taken into consideration in regard to the appointment by the Kabaka of members of the council. In this matter he shall use his judgment and abide by the advice of Her Majesty's representation of assuring in this manner a fair proportionate representation of all recognised expressions of religious beliefs prevailing in Uganda.

Article 12. In order to contribute to a reasonable extent towards the general cost of the maintenance of the Uganda Protectorate, there shall be established the following taxation for Imperial purposes, that is to say, the proceeds of the collection of these taxes shall be handed over intact to Her Majesty's representative in Uganda as the contribution of the Uganda province towards the general revenue of the Protectorate.

The taxes agreed upon at present shall be the following:

A hut tax of three rupees, or 4s per annum on any house, hut, or habitation, used as a dwelling-place.

A gun tax of three rupees, or 4s per annum, to be paid by any person who possesses or uses a gun, rifle, or pistol.

The Kingdom of Uganda shall be subject to the Pursuant to Article 2 of the Buganda Agreement, 1900, Buganda lost the right to collect tribute from vassal kingdoms with the British not only taking over but also introducing taxes such as a Hut and Gun Tax and later Bicycle Registration Tax among others. sThe Kabaka was restricted to only fifty guns compared to Mwanga who as a Kabaka mobilized over two thousand guns in his revolt. It is not in dispute that up to and including the year 1961, the Protectorate Government controlled the expenditure of all Governments, administrations and other authorities in Uganda, and that, with certain exceptions with which we are not immediately concerned, all revenues were collected by the Protectorate Government. Financial provision in aid of the activities of the Governments, administrations and other authorities was made by the Protectorate Government by means of recurrent grants made for specific purposes which,

generally speaking, were to be applied only for those purposes. The court broadly noted in the case of The Attorney General of Uganda v The Kabaka's Government that, it may be said that the Protectorate Government had therefore complete control over the revenues and expenditure of all subordinate Governments and administrations. Thus, the Buganda Government, no less than the other governments, was subject to that control.

Same Customs Regulations, Porter Regulations, and so forth, which may, with the approval of Her Majesty, be instituted for the Uganda Protectorate generally, which may be described in a sense as exterior taxation, but no further interior taxation, other than the hut tax, shall be imposed on the natives of the province of Uganda without the agreement of the Kabaka, who in this matter shall be guided by the majority of votes in his native council.

This arrangement, however, will not affect the question of township rates, lighting rates, water rates, market dues, and so forth, which may be treated apart as matters affecting municipalities or townships; nor will it absolve natives from obligations as regards military service, or the up-keep of main roads passing through the lands on which they dwell. A hut tax shall be levied on any building which is used as a dwelling place. A collection of not more than four huts however, which, are in separate and single enclosure and are inhabited only by a man and his wife, or wives, be counted as one hut.

The following buildings will be exempted from the hut tax: temporary shelters erected in fields for the purpose of watching plantations; or rest houses in the fields for the purpose of watching plantations; or rest houses erected by the roadside for passing travellers; buildings used solely as tombs, churches, mosques. or schools, and not slept in or occupied as a dwelling; the residence of the Kabaka and his household (not to exceed Fifty buildings in number); the residence of the Namasole, or Queen Mother (not to exceed twenty in number); the official residences of the three native ministers, and of all the chiefs of counties (not to exceed ten buildings in number); but in the case of dispute as to the liability of a building to pay hut tax, the matter

must be referred to the Collector for the province of Uganda, whose decision must be final.

The Collector of province may also authorise the chief of a county to exempt from taxation any person whose condition of destitution may, in the opinion of the Collector is meant the principal British official representing the Uganda Administration in the province of Uganda. The representative of Her Majesty's Government in the Uganda Protectorate may from time to time direct that in the absence of current coin, a hut or gun tax may be paid in produce or in labour according to a scale which shall be laid down by the said representative. As regards the gun tax, it will be held to apply to any person who possesses or makes use of a gun, rifle, pistol, or any weapon discharging a projectile by the aid of gunpowder, dynamite, or compressed air.

The possession of any Canon or machine gun is hereby forbidden to any native of Uganda. A native who pays a gun tax may possess or use as many as five guns. For every five or for every additional gun up to five, which he may be allowed to possess or use, he will have to pay another tax. Exemptions from the gun tax will, however, be allowed to the following extent:

The Kabaka will be credited with fifty-gun licences free, by which he may arm as many as fifty of his household. The Queen Mother will, in like manner, be granted ten free licences annually, by which she may arm as many as ten persons of her household; each of the three native ministers (Katikiro, Native Chief Justice, the Treasurer of the Kabaka's revenue) shall be granted twenty free gun licences annually; by which they may severally arm twenty persons of their household.

Chiefs of counties will be similarly granted ten annual free gun licences; all other members of the Lukiko or native council not chiefs of counties, three annual gun licences, and all landed proprietors in the country with estates exceeding 500 acres in extent, one free annual gun licence.

Article13. Nothing in this Agreement shall be held to invalidate the pre-existing right of the Kabaka of Uganda to call upon every able-bodied male among his subjects for military service in defence of the country; but the Kabaka henceforth will only exercise this right of conscription, or of levying native troops, under the advice of Her Majesty's principal representative in the Protectorate.

In times of peace, the armed forces, organised by the Uganda Administration will probably be sufficient for all purposes of defence; but if Her Majesty' representative is of the opinion that the force of Uganda should be strengthened at the time, he may call upon the Kabaka to exercise in a full or in modified degree his claim on the Baganda people for military service. In such an event the arming and equipping of such force would be undertaken by the administration of the Uganda Protectorate.

Article 14. All main public roads traversing the Kingdom of Uganda, and all roads, the making of which shall at any time be decreed by the native council with the assent of her Majesty's representative shall be maintained in good repair by the chiefs of the saza (or county) through which the road runs.

The chief of a county shall have the right to call upon each native town, village, or commune, to furnish labourers in the proportion of one to every three huts or houses, to assist in keeping the established roads in repair, provided that no labourers shall be called upon to work on the roads for more than one month in each year. Europeans and all foreigners whose land abut on established main roads will be assessed by the Uganda Administration and required to furnish either labour or to pay labour rate in money as their contribution rewards, the maintenance of the highways. When circumstances permit, the Ugandan Administration may further make grants from out of its Public Works Department for the construction of new roads or any special repairs to existing highways, of an unusual expensive character.

Article 15. The land of the Kingdom of Uganda shall he dealt with in the following manner: It cannot be over stated that the agreement laid down

measures of the distribution of land in miles which came to be known as the '*mailo land*'[51] from the English word *mile*; but this tenure of land was basically freehold. The Agreement divided the land in Buganda between the chiefs and notables in private estate and the remainder was to become crown land fully owned by Her Majesty's government. The land allotted amounted to over 9,000 square miles. According to *The Land in Buganda (Provisional Certificates) Ac,* the Copies of provisional certificates of claims issued under the Uganda Agreement, 1900, to land owners in Buganda were to be filed in the department of lands and surveys of the Government, and those copies were, at such times as the commissioner for lands and surveys would direct, be open to be searched and examined by any applicant. In many areas, agricultural production was placed in the hands of Africans. Cotton was the crop of choice largely because of pressure by the British Cotton Growing Association Textile Manufacturers, who urged the colonies to provide raw materials for British mills. This was done by cash cropping the land and Buganda with its strategic location on the lakeside reaped the benefits of this, the advantages of which were quickly recognized by the Buganda chiefs who had newly acquired freehold estates. This helped improve Buganda's economy as a state. However, the remaining pieces of lands, including the forests, swamp, bush, and unused land; was declared Crown land.

Assuming the area of the Kingdom of Uganda, as comprised within the limits cited in the agreement, to amount to 19,600 square miles, it shall be divided in the following proportions:

Forests to be brought under control of the Uganda Administration 1500 square miles. Waste and uncultivated land to be vested in Her Majesty's Government to be controlled by the Uganda Administration 9,000 square miles

Plantations and other private property of His Highness the Kabaka of Uganda 350 square miles

[51] Article of land management by Prof.Anthony Okuku

Plantations and other private property of the Namasole 16 square miles (NOTE: - If the present Kabaka died and another Namasole were appointed, the 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.)

Plantation and other private property of the Namasole, mother of Mwanga 10 square miles To the Princes: Joseph, Augustine, Ramazan, and Yusufu-Suna, 8 square miles each 32 square miles

For the Princesses, sisters, and relations of the Kabaka 90 square miles

To the Abamasaza (chiefs of counties) twenty in all, 8 square miles each (Private property) 160 square miles

Official estates attached to the posts of the Abamasaza, 8 square miles each 320 square miles

The three Regents will receive private property to the extent of 6 square miles each 48 square miles

And official property attached to their office, 16 square miles, the said official property to be afterwards attached to the posts of the three native ministers 48 96

Mbogo (the Muhammedan chief) will receive for Himself and his adherents 24 square miles. Kamuswaga, chief of Koki with receive. 20 square miles

One thousand chiefs and private landowners will receive the estates of which they are already in possession, and which are computed at an average of 8 square miles per individual, making a total of 8,000 square miles

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 square miles

Land taken up by the Government for Government stations prior to the present settlement (at Kampala, Entebbe, Masaka etc. etc.) 50 square miles Total 19,600 square miles

After a careful survey of the Kingdom of Uganda has been made, if the total area should be found to be e less than 19,600 then the 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. Should, however, the area of Uganda be established at more than 19,600 square miles, then the surplus shall be dealt with as follows:

It shall be divided into two parts, one-half shall be added to the amount of land which is vested in Her Majesty's Government and the other half shall be divided proportionately among the properties of the Kabaka, the three Regents or native ministers, and the Abamasaza, or chiefs of counties.

The aforesaid 9,000 square miles of waste or cultivated, or uncultivated land, or land occupied without prior gift of the Kabaka or chiefs by bakopi or strangers, are hereby vested in Her Majesty the Queen of Great Britain and Ireland, Empress of lndia, and Protectress of Uganda, on the understanding that the revenue derived from such lands shall form part of the general revenue of the Uganda Protectorate.

The forests, which will be reserved for Government control, will be, as a rule, those forests over which no private claim can be raised justifiably, and will be forests of some continuity which should be maintained as woodland in the general interests of the country.

As regards the allotment of the 8,000 square miles among the 1,000 private landowners, this will be a matter to be left to the decision of the Lukiko, with an appeal to the Kabaka.[52] The Lukiko will be empowered to decide as to the validity of claims, the number of claimants and the extent of land granted, premising that the total amount of land thus allotted amongst the chiefs and

[52] Principles of land law by John. T. Mugambwa

accorded to native landowners of the Country is not to exceed 8,000 square miles.[53] Europeans and non-natives, who have acquired estates, and whose claims thereto have been admitted by the Uganda Administration, will receive title-deeds for such, estates in such manner and with such limitations, as may be formulated by Her Majesty's representative. The official estates granted to the Regents, native ministers, or chiefs of counties are to pass with the office, and their use is only to be enjoyed by the holders of the office.

Her Majesty's Government, however, reserves to itself the right to carry through or construct roads, railways, canals, telegraphs, or other useful public works, or to build military forts or works of defence on any property, public or private, with the condition that not more than 10 per centum of the property in question shall be taken up for these purposes without compensation, and that compensation shall be given for

ORIGINS OF THE BUGANDA LAND BOARD.

As per the result of Article 15 of the 1900 Buganda agreement divided the land of Buganda and Uganda after the signing of the agreement by a premature king that was represented by reagents. The Buganda agreement created changes to the land ownership in Buganda and Uganda. It provided that;

With the division of land in Buganda, The Baganda started noticing the consequences of their signing of the 1900 Buganda agreement that they entered into incompetently. With the once owned land of the kabaka partitioned there came a need for a creation of a body that was responsible for governing the land of the kingdom on behalf of the kabaka. Prior to the treaty the king had absolute power and just delegated some power chiefs and clan leaders in various parts of Buganda to manage the land on his behalf.

[53] Evoluton of Constitutional History by Prof. G.W. Kanyeihamba

One can therefore say the Buganda Land Board has its genesis in the signing of the 1900 Buganda Agreement that divided the land in Uganda and this laid a need for a body to manage the land in the kingdom and saw the birth of the Buganda Land Board in 1962 constitution.

Buganda Land Board (BLB) is a professional body set up by His Majesty the Kabaka of Buganda to manage land and properties of Buganda that was returned under the reinstitution of the Assets and properties Act 1993 cap 247 which included the 350 square miles and 300 square miles returned in the agreement signed between the president of Uganda and His majesty the kabaka of Buganda in August 2013 and has branches in all 18 counties of Buganda.

[54]This body was set up under Chapter X11 of the 1962 Constitution to manage public land in Buganda. Its roots are in the 1900 Agreement (Uganda/Buganda Agreement) under which various chunks of land of varying sizes were grabbed from natives and given away to various individuals, chieftains and religious groups.

The chunks of land given away were neither surveyed nor did they have any known tenancy category in the Kiganda culture. The colonial authorities eventually regularized this land grabbing and in 1908 enacted a legislation known as The Land Law of June 15, 1908. This law created two tenancies. Under Section 2 thereof, a tenancy known as Mailo was created.

The section specifically stated to hold land in a manner described in that section "will be known as holding Mailo, and land of this description will be called Mailo". Section 5 created a second tenancy which was described as that land which a chieftainship shall hold for the time, he shall hold the chieftainship. It stipulated that he shall be entitled to take all the profits from that land, but when he leaves that chieftainship, the successor chief will take over the land.

[54] The 1962 Constitution

In the words of Section 5(c) "to hold land in this manner, will be called to hold official mailo." The actual demarcation of both the mailo and the official mailo tenancies was not done until five years later when the Buganda Agreement (Allotment and Survey) Law of 1913 was enacted

Since the mailo was under the control of individuals, or bodies to which it was allocated, it was necessary to put in place a statutory public body to manage the official mailo and herein lay the origin of the Buganda Land Board.

The chieftainships holding official mailo were diverse, covering saza chiefs, gombolola chiefs, land held under chieftainships of the Katikiro, Omulamuzi, Omuwanika and others described in the 1900 Agreement and elsewhere in the subsequent laws as official mailo. Indeed, even the chunk of land allocated to the Kabaka under the 1900 Agreement was converted to official mailo under Section 2(b) of the June 15, 1908 Land Law.

The Buganda Land Board under whose authority the administration of the official mailo was placed was a statutory body of the Uganda Protectorate. It should be noted that at the conclusion of 1900 Agreement, the Uganda Protectorate consisted of only one province and that was the Buganda Kingdom. The 1900 Agreement in Article 3 envisaged "other Provinces" which were in future to be added to the Province of Buganda Kingdom and indeed when the final demarcations of the Uganda Protectorate were made, three other provinces namely; the Western Province, the Eastern and the Northern provinces had all been created and the four formed the Uganda Protectorate which eventually emerged into the current independent Republic of Uganda.

When the Uganda Protectorate gained Independence, the Constitution of the newly independent State of Uganda, so fit to dedicate the whole chapter on the administration of Public Land. This was Chapter XII and under Article 118, Public Land in Uganda was to be administered by three sets of bodies. The areas of Uganda which were administered under federo units,

public land was under Land Boards, while those under districts; public land was administered by District Land Boards.

The Uganda land commission was established by the 1995 Constitution Art. 238. The Uganda Land Commission was created by the Ugandan Parliament in 1995. The mission of the ULC is to hold and manage all land in Uganda legally owned or acquired by Government in accordance with the Constitution of Uganda. The Commission is also responsible for holding and managing [55]land owned by Uganda, outside of the country. However, that second mandate may be delegated to Uganda's Missions abroad. The Commission is governed by a full-time Chairperson, assisted by up to eight part-time Commissioners.

The 1995 Constitution cannot be construed to resituate public assets to institutions by whatever name called which never owned them in the first place, from whom they have never been confiscated and by whom no official public accountability is exacted by the Constitution. Public assets can only be managed by individuals or body of individuals or corporations which can be scrutinized by the Auditor General and, therefore, accountable to the Public.

The Constitution has vested the administration of public land in the Uganda Land Commission, District Land Boards, or Regional Land Boards and all these public bodies are scrutinisable by the Auditor General and, therefore, accountable to the public. Under the 1967 Constitution, when all public land had been put under the Land Commission, any monies accruing from the Land so vested under the commission had to be paid to such authority as Parliament may prescribed.

[56]The Buganda land board is a body that represents the kabaka and it is delegated to carry out land matters in Buganda this is stressed in the case of

[55] THE LAND ACT CAP
HAND BOOK ON LAND RIGHTS AND INTRESTS
[56] www.ulii.com

Buganda Land Board v Wampamba (Miscellaneous Cause 622 of 2013) [2014] UGHCLD 91 (20 February 2014). The application was brought by chamber summons under Order 7 rule 11 and 19 of the Civil Procedure Rules SI 71-1 and Section 98 CPA for orders that the plaintiff's plaint be rejected and struck out for suing a non-existent party and for being misconceived, incompetent, frivolous and vexatious, bad in law as it does not disclose a cause of action and costs of the application

Article 16 of the 1900 Buganda aggrement. Until Her Majesty's Government has seen fit to devise and promulgate forestry regulation, it is not possible in this Agreement to define such forest rights as may be given to the natives of Uganda; but it is agreed on behalf of Her Majesty's Government, that in arranging these forestry regulations, the claims of the Baganda people to obtain timber for building purposes, firewood, and other products of the forests or uncultivated lands, shall be taken into account, and arrangements made by which under due safeguards against abuse these rights may be exercised gratis.

Article 17 of the 1900 Buganda aggrement. As regards mineral rights. Pursuant to *Article 17* of the Agreement, the rights to minerals found on private estates were vested in the owners of those estates subject to a ten per centum advalorem duty which was to be paid to the Uganda Administration when the minerals were worked. Matters relating to land and minerals in Buganda provided more evidence that the 1900 Buganda Agreement was regarded as a legal constraint upon the crown's powers in Buganda. While in the rest of the Protectorate, all land and minerals were by virtue of the Protectorate declared property of the crown, in Buganda it was otherwise. Under the Agreement, land in Buganda was divided between the crown and the notables Of great note is the idea that, were the revenue collected from the hut and gun tax by Buganda exceeded two years running from a total value of forty-five thousand pounds, the Kabaka and chiefs of the counties had the right to appeal to Her Majesty's Government for an increase in the subsidy given to the Kabaka, native ministers and chiefs as long as the increase

was proportional to the increase in revenue. It's a position of the law however as noted in the case of ***R. v. Anselmi Kiimba***, that under the Buganda

Agreement a chief was bound to give information to the British authorities in respect to the Hut and Poll Tax. Be that as it may, Article 12 of the Buganda Agreement, 1900 exempted Buganda from any further interior taxation without the consent of the Kabaka. So, the Kabaka had a voice in respect of interior taxation matters. On a bad note, though, in the case of ***Rex v. The Buganda Cotton Co.***, where the question of interior, as distinct from exterior, taxation in relation to art. 12 of the Uganda Agreement was considered; the judgment of Chief Justice Griffin in that case concluded with an important obiter dictum that the terms of a treaty are not part of the municipal law unless and so far as a statute contains an express reference to a treaty so as to incorporate it therein. This position seems to tickle the heart of the dominance and primacy of the Buganda Agreement. Suffice to note, it was a statement made merely obiter. Candidly, Udo Udoma CJ, Jones and Slade JJ lwere right on the point of law in the case of Joseph Kazaairne v the Lukiko when they said that it is implicit in the Buganda Graduated Tax Law, 1954 and the Uganda (Independence) Order in Council 1962 that the taxation levied forms part of the revenues of the Kabaka's Government, and the assessment and collection of tax is expressly a matter for officials of the Kabaka's Government. It is nevertheless a factual assertion that the British government treated the rest of the regions differently from Buganda in regard to taxation. For instance, for the Arms License Tax, the Banyoro paid ten shillings whereas the Baganda paid four shillings. This was beyond proof that persons in other regions were classified as foreigners in their own country. Even the graduated tax did not take into account the poor conditions of living of the peasants, yet still they were made to pay relatively higher taxes than the Baganda. Unfortunately, nothing in the Independence Order, in any way affected the operation or even tried to rectify the anomaly of either law which was indubitably discriminatory. As a result of this, exploitation by the British was at a wide scale in other regions; it was conversely not common in

Buganda. Thus, it can be rightly justified that Buganda was a protected state within the Protectorate Uganda.

The rights to all minerals found on private estates shall be considered to belong only to the owners of those estates, subject to a 10 per centum ad valorem duty, which will be paid to the Uganda Administration when the minerals are worked. On the land outside private estates, the mineral rights shall belong to the Uganda Administration, which, however, in return for using or disposing of the same must compensate the occupier of the soil for the disturbance of growing crops or building, and will be liable to allot to him from out of the spare lands in the Protectorate an equal area of soil to that from which he has been removed. On these waste and uncultivated lands, the Protectorate, the mineral rights shall be vested in Her Majesty's Government as represented by the Uganda Administration. In like manner the ownership of the forests, which are not included within the limits of private properties, shall be henceforth vested in Her Majesty's Government.

Article 18 of the 1900 Buganda aggrement. In return for the cession to Her Majesty's Government of the right of control over 10,550 square miles of waste, cultivated, uncultivated, or forest lands, there shall be paid by Her Msajesty's Government in trust for the Kabaka (upon his attaining his majority) a sum of £50O, and to the three Regents collectively, £600, namely, to the Katikiro £300, and the other two Regents £150 each.

Article 19 of the 1900 Buganda aggrement. Her Majesty's Government agrees to pay to the Muhammedan Uganda chief, Mbogo, a pension for life of £250 a year, on the understanding that all rights which he may claim (except such as are guaranteed in the foregoing clauses) are ceded to Her Majesty's Government.

Article 20 of the 1900 Buganda aggrement. Should the Kingdom of Uganda fail to pay to the Uganda Administration during the first two years after the signing of this Agreement, an amount of native taxation, equal to half that which is due in proportion to the number of inhabitants; or should

it at any time fail to pay without just cause or excuse, the aforesaid minimum of taxation due in proportion to the population; or should the Kabaka, chiefs, or people of Uganda, pursue, at any time, a policy which is distinctly disloyal to the British Protectorate; Her Majesty's Government will no longer consider themselves bound by the terms of this Agreement. On the other hand, should the revenue derived from the hut and gun tax exceed two years running a total value of £45,000 a year, the Kabaka and chiefs of counties shall have the right to appeal to Her Majesty's Government for an increase in the subsidy given to the Kabaka, and the stipends given to the native ministers and chiefs, such increase to be in the same proportional relation as the increase in the revenue derived from the taxation of the natives.

Article 21 of the 1900 Buganda aggrement. Throughout this Agreement the phrase "Uganda Administration" shall be taken to mean that general Government of the Uganda Protectorate, which is instituted and maintained by Her Majesty's Government; " Her Majesty's representative" shall mean the Commissioner, High Commissioner, Governor, or principal official of any designation who is appointed by Her Majesty's Government to direct the affairs of Uganda.

Article 22 of the 1900 Buganda aggrement. In the interpretation of this Agreement the English text shall be the version which is binding on both parties.

The Uganda Agreement (alternatively the Treaty of Mengo) of March 1900 formalized the relationship between the Kingdom of Uganda and the British Uganda Protectorate. It was amended by the Buganda Agreement of 1955 and Buganda Agreement of 1961.[57]

The Buganda Kingdom relies primarily on agriculture and commerce for its economic sustainability. These sectors form about 70% of the Kingdoms' GDP. These sources are heavily dependent on land. The social and cultural organization of the society as reflected in the systems of property ownership,

[57] Constitutional History and politics of East Africa by Prof.G.w. Kanyeihamba

Kingship, and lineage are inextricably linked to land. Land thus covers every facet of life in Buganda. The efficiency with which land is managed determines the level of social harmony, economic progress and living environment.

Prior to the Buganda Agreement of 1900, Buganda was an almost absolute monarchy. Under the Kabaka, there were three types of chief: bakungu (administrative) chiefs, who were appointed directly by the Kabaka; traditional bataka chieftains; and batangole chiefs, who served as representatives of the Kabaka, charged with "maintaining internal security, supervising royal estates and military duties".The 1900 agreement, however, greatly enhanced the power of the Lukiiko (which had previously been simply an advisory council) at the expense of the Kabaka While Buganda retained self-government, as one part of the larger Uganda Protectorate, it would henceforth be subject to formal British overrule. The Buganda Agreement of 1955 continued the transition from absolute to constitutional monarchy.

Following Uganda's independence in 1962, the kingdom was abolished by Uganda's first Prime Minister Milton Obote in 1966 declairing Uganda a republic. Following years of disturbance under Obote and dictator Idi Amin, as well as several years of internal divisions among Uganda's ruling National Resistance Movement under Yoweri Museveni, the President of Uganda since 1986, the kingdom was officially restored in 1993. Buganda is now a traditional kingdom and thus occupies a largely ceremonial role. Since the restoration of the kingdom in 1993, the king of Buganda, known as the Kabaka, has been Muwenda Mutebi II. He is recognized as the 36th Kabaka of Buganda. The current queen, known as the Nnabagerekaor Kaddulubale is Queen Sylvia Nagginda.

During Uganda independence, the constitutional position of Buganda (and the degree to which it would be able to exercise self-government) was a major issue. Discussions as part of the Uganda Relationships Commission resulted in the Buganda Agreement of 1961 and the first Constitution of Uganda

(1962), as part of which Buganda would be able to exercise a high degree of autonomy. This position was reversed during 1966–67, however, before the Kabakaship and Lukiiko were disestablished altogether in 1967 before being restored in 1993.

By the terms of the 1900 Agreement between the British Special Commissioner and the chiefs and people of Buganda 1,003 square miles of land were allotted to the King and his family and to the big chiefs, both in their political capacity and in private ownership. Another 8,000 square miles were ailottd to about 1,000 chiefs and land owners at the discretion of the Lukiiko.

The framers of the agreement worked, as regards its land allotment clauses, on the assumption that they were only conferring in a permanent form the ancient rights and privileges possessed by the allottees of the square miles. In practice they soon found that the rights so conferred on individuals constituted a fundamental change in the traditional system. Therefore, both to legalise and to regularise these rights, and to differentiate them from those of freeholders in English law, a name was found for the system of land tenure and a law defining it was enacted in 1908.

The name is the word 'mailo' and the law is the Land Law of 1908. The main provisions of this law are:

(i) that an individual can own up to 30 square miles without special sanction of the Governor; (ii) that a mailo owner can transfer land by sale, gift or will to another person of the Protectorate but cannot transfer land or lease it to anyone who is not of the Protectorate without the special permission of the Lukiiko and the Governor;

(ii) that where a person leaves no will, succession will be ascertained by customary rules of succession;

(iii) that customary rights of the people to the use of roads, running waters and springs are preserved. The effects of both the Agreement

and the Land Law were, on the one hand, to confer proprietary rights which were no longer associated with political functions on a small section of the community, the then office-holders, and to confer them in perpetuity; and on the other hand, to free the peasants from all obligations to the land-owner except those involved in the relationship between tenants and landlords. In other words, the relationship was removed from the basically political to the mainly economic sphere.

THE CROWN LANDS ORDINANCE, 1903

The difference between the total land area of Buganda and the land covered by the mailo estates is 8,292 square miles. This land is administered under the Crown Lands Ordinance of 1903. It appears that Sir Harry Johnston's original intention was, after giving the King and the chiefs estates of 'a fair size', to secure control of the rest, part of which was to be placed under the control of a Board of Trustees, and the other part under the control of the Crown for free disposal.

The Trusteeship land was to be administered for the benefit of natives. In the end however no distinction was made between Crown land and Trusteeship land. Under the above ordinance some few grants of freehold were made to non-natives till all sales in freehold were suspended by order of the Secretary of State in 1916. The whole position has been clarified by a recent declaration of policy.

Part of General Notice No. 551 of 1950 reads as follows: "his excellency the Governer" wishes all the people of Uganda to understand the policy of His Majesty's Government and the Protectorate Government which has been followed in the past and will be [58]followed in the future, in respect of Crown

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[58](2) (1) J. V. WILD, op. cit,, p. 78. (2
The Registration of Titles Ordinance 1922 •

land outside townships and trading centres in the provinces other than Buganda. The provisions of the declaration would in Buganda apply to the Crown land and not mailo land. Firstly, these rural lands were being held in trust for the use of the African population. Secondly, although the right under the Laws of the Protectorate is reserved to the Governor as representing the King to appropriate areas which he considers are required for forests, roads, townships or for any other public purposes, yet it has been agreed with the Secretary of State that the Governor shall in every such case consult the African Local Government concerned and give full consideration. Moreover, the Governor will not alienate land to non-Africans except:

(a) for agricultural or industrial or other under takings which will in the judgment of the Governor-in-Council promote the economic or social welfare of the inhabitants of the territory; and

(b) for residential purposes when only a small area is involved.

Thirdly, it is not the intention of His Majesty's Government and the Protectorate Government that the Protectorate of Uganda shall be developed as a country of non-African farming settlement," On most of the Crown land Baganda tenants live in some what the same conditions as on the mailo estates of private owners. The numbers of the tenants on Crown land are not available but in the gombolola of Mumyuka of Busiro in 1950 there were no tenants on Crown land. And in the gombolola of Musale in Buddu in 1950 there were only 1,038 tax-payers on Crown land out of a tax-paying population of 7,411. This is only about 14.0%.

From its inception the mailo system was associated with documents in the minds of the owners. In the first instance Provisional Certificates were issued to all mailo. The conditions under whic h tenants on Crown compare with the conditions of tenants on the mailo estates. owners whose allotted claims had been roughly marked out on actual ground. In the event of sale or gift a certificate of ownership was normally issued by the Lukiiko as an instrument of transfer.

In 1908 a short Registration of Land Titles Ordinance was enacted and this therefore covered the registration of the first mailo grants issued in 1909. This was a provisional measure, but it was based on what is known as the Torrens system, and it established both the system of registration of title with a guarantee of indefeasibility, and also the principle that all land upon registration must be indentifiable by a proper plan.

When a comprehensive Registration of Titles Ordinance was enacted in 1922 on the same principles as the Land Titles Ordinance 1908, it was easy to bring the mailo titles into the system of registration. Section 9(2) of the Ordinance reads : "All land included in any final mailo certificate shall after the commencement of this Ordinance be subject to the operation of this Ordinance and shall be deemed to have been registered thereunder, " This would not be possible in any form of tribal or clan tenure because the exact rights would not be amenable to such succinct definition, nor would the owners be as easily identifiable without, in some cases, exhaustive inquiries, and in other cases, without decisions.

In the case of the mailo system the rights were part of a statutory form of tenure, the owners were registered and the surveys were in advanced stages of completion. Another feature of the Buganda system is that in 1939 the Buganda Government passed the Land (Sale and Purchase) Law which not only extinguishes legal rights arising from such documents as are not registered within a statutory period of two months, but also makes it illegal both to sell and to buy land, unless the person selling the land is:

(a) the registered proprietor of such land or

(b) the purchaser or donee of an unsurveyed part of mailo land, and a memorial of his interest in such land has been entered in the mailo register.

(d) The Kabaka's Prerogatives When the Uganda Agreement was made the Kabaka was a minor, and partly owing to this fact, and partly owing to the bitter memories of the previous reign, the drafters of the Agreement

intentionally emphasized the rights of the individual chiefs as Signatories of the Kabaka.

The overlordship of the Kabaka in relation to the land was not recognised. Although nothing was specifically included in the Agreement, it was part of the understanding that the chiefs would secure permanent rights to their estates from which the Kabaka had no more power to remove them. Again, it was enacted in the Land Law, 1908 that "the owner of a mailo will not be compelled to give a chief who is superior to him any portion of the produce in money or kind". This has been interpreted to apply to the mailo owners in relation to the Kabaka. All that has remained of the Kabaka's prerogatives is the custom of presenting to him all the successors to the mailos before they are confirmed in their rights.

The legality of this in cases where proper wills have been made is dubious, but the custom is so entrenched that it has not so far been challenged. What is required by the Land Succession Law of 1912 is that any one who has land left to him shall first obtain from the Lukiiko a certificate of succession signed by the President of the Lukiiko and six other members. But where there is no will the safest procedure would be, in any case, to seek the approval of the Kabaka since his rights as final arbiter in cases of succession where the successors are ascertained according to native custom, were secured in an agreement with the Protectorate Government called The Clan Cases Agreement, 1924. Further, all the mailo owners consider themselves as possessing recognised rights and powers as unpaid local administrators of the people on their land.

It is believed that these rights are acquired through the formal presentation to the Kabaka. The anomaly is that anyone who acquires land by purchase assumes the same rights without being presented to the Kabaka. In a recent law the overlordship of the Kabaka was partially revived and he was empowered compulsorily to acquire land for purposes beneficial to the Nation. This law was greatly resented when it was made and the then Prime Minister of Buganda was assassinated for forcing it through the Lukiiko. It

was argued either that the Kabaka had not, and could not, have such power over private property, or that the Kabaka would be forced by the Europeans to dispossess the Baganda of their land.

A recent amendment, made at the Kabaka's request, makes his powers of compulsory acquisition subject to a resolution of the Lukiiko.

The Busulu and Envujo Law, 1928 The relationships between the mailo owners and the peasants 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.

Busulu is a commutation in money of the labour obligations by a tenant to the landlord. Nvujo is a commutation in money of the customary present of a part of the produe or a calabash of beer. The exploitation took the form of either demanding the use of the customary labour 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 favoured the chiefs as 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.

[59] 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. A 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 was therefore enacted. The main effect of this law was to consolidate whatever customary rights were covered by it into a legal form. But where the law is silent, and it is silent on many points, ancient custom, or whatever is considered ancient custom by the judges, has been followed. Where, on the other hand, the law and the customary rights conflict, the law is paramount.

For example, in ***Kiwanuka vs Ntwatwa*** where customary rights were supposed to be in conflict with the law, the Judicial Adviser stated as follows: "Whatever may have been the rights of the appellant by ancient custom to claim that the piece of land occupied by his relatives reverted to him when they ceased to use the land, that ancient custom has been done away with by the Busulu and Envujo Law."

[59] (1) Principal Court, Civil Appeal. No. 46 of 1947.

Red Flags of the 1900 Buganda Agreement

The Buganda agreement of 1900 was not a suitable contract because of the numerous vitiating factors that renders a contract voidable, and this is a reason why very many baganda never considered it to be a good agreement as cleary analysed below.

Note: even though we stipulate the vitiating factors but also the principle of Non Est. Factum 'it is not my deed'can also be implemented on grounds that the Kabaka of Buganda Daudi Chwa II being so young he was represented by the regents who didn't seek his guidance nor delegation , but they signed on terms they didn't know for their benefits thus rendering the Buganda agreement of 1900 voidable hence considering the Namirambe agreement of 1955 a valid contract on grounds that the Kabaka of Buganda Mutesa II was in the capacity of signing the agreement.

NB: Was also the 1955 Namirembe agreement a valid contract? Because it was implemented for the Kabaka to come back to Buganda from exile meanwhile it was also signed on grounds of duress and undue influence.

Is the 1900 Buganda Aggrement a True Agreement?

Agreement means a promise/commitment or a series of reciprocal promises which constitutes consideration for the parties to contract[60]

The Ugandan Legal Meaning of a Contract

Section 2[61]**agreement**" means a promise or a set of promises forming the consideration for each other and to determine whether an **agreement amounts to a contract**, **section 10(1)**[62] must be made with the

[60] https://businessjargons.com

[61] Contracts Act 2010

[62] Contracts Act 2010

free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.**In the case of Printing and Numerical Registering Co v Sampson [63]MR Sir George Jesse noted that**; "If there is one thing more than the other which public policy requires, it is that men of full age and competent understanding shall have the at most liberty in contracting and that their contract when entered into freely and voluntarily shall be held sacred and shall be enforced by the courts of justice."

Also, In the case of **Greenboat Entertainment Ltd Vs City Council of Kampala[64] a contract as was defined as; -** "In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable there must be: capacity to contract; intention to contract; consensus and idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction any of them is missing, it could as well be called something other than a contract"

Whether the 1900 Buganda Agreement Pass the Test of a Valid Contract or Agreement in the Ugandan Law?

A person will not properly understand as to whether the 1900 Buganda Agreement passed the validity of a valid contract in Uganda unless he or she knows what makes a contract valid in Uganda

Byamugisha CK in the case of **William Kasozi Vs DFCU Bank.[65]** Stated that for a contract to be valid and enforceable the following prerequisites must exist**.**

1. Offer and acceptance of the offer
2. Capacity to contract

[63] **(1875) 19 Eq 462**
[64] **C.S No. 0580 of 2003**
[65] **H.C.C.S NO 2326 OF 2000**

3. Intention to create legal relationship
4. Consent
5. Consideration

Applicability of The Tests of a Valid Contract on The Buganda Agreement Of 1900

Offer (Was there an offer between Buganda and the British)

According to[66]A promise to do or refrain from doing something in exchange for something else. **The contracts Act 2010[67] defines an "offer" to** means the willingness to do or to abstain from doing anything signified by a person to another, with a view to obtaining the assent of that other person to the act or abstinence. The definition of the contracts Act was adopted in the case of **Ssempa v Kambagambire[68]**

Nature of an offer

An offer may be made to an individual, to a group of persons or to the public at large. An offer may be general or specific. That is, it may direct to a particular person, class of persons or the public at large. An example of an offer made to the public was in the famous case of **Carllil v Carbolic Smoke Ball Co.[69]**

An offer may be oral, written or implied from the conduct of the offeror.

[66] https://www.law.cornell.edu/
[67] Section 2
[68] (Civil Suit 408 of 2014) [2017] UGCommC 133 (03 July 2017);
[69] [1893]1 QB 256

An offer must be communicated to the intended offeree or offerees. An offer remains ineffective until it is received by the offeree. To have the mutual assent required to form a contract, the offeree must have knowledge of the offer he cannot agree to something of which he has no knowledge. Accordingly, the offeror must communicate the offer, in an intended manner, to the offeree.

An offer must be clear and definite i.e.; it must be certain and free from vagueness and ambiguity. And in **Sands v. Mutual Benefits Ltd**[70] the Plaintiff a tenant sued the Landlord for unlawful eviction from premises which were being held on a 3yr lease, part of the tenancy agreement stated that the premises were being rented at such rent initially agreed. The Landlord argued that this Agreement was void for uncertainty but the Court disagreed**.**

An offer may be conditional or absolute. The offeror may prescribe conditions to be fulfilled by the offeror for an agreement to arise between them

Offer must be communicated to the offeree. **Section 3(1)**[71] provides that communication of an offer is made by an act or omission of a party who proposes the offer by which that party intends to communicate the offer or which has the effect of communicating the offer.

Was there an offer that was made in the Buganda agreement and who made it?

In this aspect, the British that made offers to Buganda, so the British were represented by Sir Harry Johnson "offeree" made the offer the to the king of Buganda with various terms as seen in the 1900 aggrement as per the terms of **Article 2** where the Kabaka and chiefs were offered and agreed to forfeit collection of tribute from neighboring provinces in favor of His

[70] (1971) E.A 156,

[71] Contracts Act 2010

Majesty'sgovernment. **Article 6** which offered to recognize the Kabaka as the native ruler of his people nd so give him protection so long as the Kabaka, chiefs and the people of Buganda will conform to the laws (and overrule) of His Majesty **Article 7** offered to the Namasole mother of the Kabaka to receive a lifetime allowance of 50 pounds a year while this sum was designated during her life time, it was one-off allowance that would not continue for the subsequent Namasoles.Among other provisions such as **Article 15 on land**

However, the the offer was directed to the King of Buganda but it was assented by the representatives because the kabaka chwa II was still young

Capacity to contract (did the parties have the capacity to contract)

What is capacity to contract?

The presumption is that all parties to a contract have the power to enter into a contract

Who are those people that have capacity to contract in Uganda?

Section 11[72] provides that a person has capacity to contract where that person is;

(a) eighteen years or above;

(b) of sound mind;

(c) not disqualified from contracting by any law to which he or she is subject

[72] Contracts Act 2010

Though there are many special categories of people that I would want to give a clear analysis in capacity to contract, I will only concentrate on minors for a reason

Contracts by Minors

A minor **is defined by the contract Act** as a person who hasn't attained the age of 18 and the same is the provision under Article 257(c)[73].Contracts entered into by a minor may be Valid (binding), void or voidable. It has been stated that for purposes of contracting, a minor is a person who is under the age of 18 years.

Contracts made by a minor are voidable at his option, the options available to the minor in such a contract are twofold;

a. To repudiate the contract within a reasonable time upon attaining a majority age. These types of contracts are valid until upon attaining the. Valid majority age.

b. To ratify the contract notwithstanding the contractual capacity which is provided for in Section 11 of the contract Act where there are contracts which are generally held to bind an infant.

1) **Contracts of service**

These are contracts of a beneficial nature to the minor. They are also binding. These include contracts for education, those enabling a minor to earn a living or improve his skills, occupation or profession. The contract must be beneficial to the minor. This is illustrated in **Roberts Vs Grey[74]** the infant defendant had agreed to go on a world tour with the plaintiff a professional player, competing against each other in matches. The plaintiff made all the necessary arrangements but the defendant refused. The plaintiff sued and court observed that the contract was for the infant's benefit, as he would gain

[73] The 1995 constitution of Uganda as ammended

[74] (1913)

experience and fame by his association with the outstanding player like the plaintiff. However, if a contract as a whole is not beneficial to the minor, it will not be binding on him.

2) **Contracts for necessaries;**

In defining necessaries for the purpose interpretation of infants the authorities have applied a more general interpretation. It should not be restricted to things which are but may include articles which are reasonably necessary to the minor having regard to his station in life. The goods must be suitable to the condition in life of the infant to his actual requirement at the time of the sale and time of delivery.

A minor is liable on these contracts of necessities of life. Therefore, minor is not bound to pay for items that are deemed luxurious. Whether a particular commodity falls within the category of "necessaries" depends on the circumstances of each case. And in **Nash v Inman**[75] The Defendant upon being sued for clothes supplied to him while still a minor

Goods were not necessaries as he was already well supplied with clothes. Court held that the clothes were not necessaries within the act and the defendant was not liable to pay for them. There must be things without which the infant cannot reasonably exist. These are not restricted to goods, shelter, and clothes. It extends to cover things which will cultivate the mind positively.

[75] (1908-10) ALL ER REP 317.

APPLICABILITY OF THE TEST OF CAPACITY TO BUGANDA

A photo of Kabaka Daudi Chwa II

The kabaka of Buganda Daudi Chwa was a minor so he had no capacity to contract since this was not a contract of necessaries nor service. So, it was right in law that the kabaka not to sign the agreement since she was still minor

A question now goes in what capacity did the likes of Apollo Kaggwa, Stanslas Mugwanya among others sign the Buganda Agreement of 1900?

The answer is obvious they signed as agents. Now a question goes who is an agent and who appoints an agent?

Definition of agency

Agency may be defined as the relationship which exists whenever one-person (called the agent) acts on behalf of another person (the principal). Where such

relationship exists, the acts of the agent are said to be the acts of the principal, therefore in case of any liability arising from such acts, the principal will be liable.

An agent is a person who is employed to do work on behalf of another person known as a principal. The law of contract generally applies to the agency relationship. However, agency itself forms one of the exceptions to the doctrine of privity of contract.

Capacity of an Agent and Principal

Any person with legal capacity to enter into a contract can appoint or be **appointed** as an agent.

Section 119[76] Contract Act provides that a person may employ an agent, where that person is eighteen years or more, is of sound mind and is not disqualified from appointing an agent by any law to which that person is subject

How is agency created?

Agency can be created in a number of ways and these include;

1) By Express Agreement

Section 122(1) & (2) [77] This is where an agent is expressly appointed by the principal. The appointment may be oral, or in writing (agreement in writing). In other words, a person is appointed in clear terms by the principal to act as his agent. E.g. if the principal wants the agent to execute/sign a deed/agreement on his behalf for the sale or purchase of land, he will execute a document called a power of attorney. This document is a formal document whose format is laid out in the Registration of Tittles Act.

[76] Contracts Act 2010

[77] Contracts Act 2010

2) Agency by Implied Agreement

Section 122 (2)[78] This kind of agency arises by operation of the law. In other words, the law implies its existence from the circumstances of a particular case. It arises in a situation where by although there is no express agreement appointing a person as an agent, the law will imply the existence of an agency relationship from the circumstances of the case or from the conduct of the parties.

3. Agency by Estoppel

This kind of agency arises from the doctrine of estoppel which is to the effect that where a person by words or his conduct willfully leads another to believe that a certain state/set of circumstances or facts exists and that other person acts on that belief, the person who made the statement of facts will be precluded/estopped from later on denying the truth of such statements even if such state of affairs did not in fact exist.

4.Agency by Necessity/ authority of agent in an emergency

This kind of agency is also conferred by law**.** **Section 124 of the Act** provides that in an emergency, an agent has authority to do any act for the purpose of protecting a principal from loss, as would be done by a person of ordinary prudence, under similar circumstances.

5) Agency by ratification

Section 130 (1) provides that where an act is done by one person on behalf of another but without the knowledge or authority of that other person, the person on whose behalf the act is done may ratify or disown the act.

Section 130 (2) states that, where person on whose behalf an act is done, ratifies the act, the same effects shall follow, as if the act was performed under his or her authority. **Section 131 provides** that ratification may be express

[78] Contract Act

or implied by the conduct of the person on whose behalf an act is done. Not do so, since it was not in existence when the contract was made.

Authority of the Agent

Authority of an agent means his capacity to enter into a particular transaction and bind the principal by such transaction. The agent can only bind the principal if he acts within the scope of his authority.

Section 123 (1) [79] states that an agent with authority to do an act has authority to do anything which is necessary to do the act, which is lawful. agent with authority to carry on a business has authority to do anything which is necessary for the purpose of carrying on the business or which is usually done in the course of conducting the business.

Duties of Agents in contracts

a. Duty of Good faith

The agent must act in good faith. This entails three things:

(i) **The agent must not let his own interests' conflict with his duty to the principal.** The reason for the rule is to prevent the agent from being tempted not to do the best for his principal. In the case **of Igben & Oke v. Etwarie**[80] **(1971) 1 NCLR 85** the High Court of Benin held that it was a rule of general application that an agent should not be allowed to enter into agreements in which he has or can have a personal interest conflicting with his principal.

(ii) **The agent must not make a secret profit** the agent must not use his position to secure a benefit for himself. Where an agent

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Contracts Act
[80] (1971) 1 NCLR 85

makes a secret profit, he must disclose and account for it to the principal. In the case of **Lucifero v. Castel** [81] an agent appointed to purchase a yacht for his principal bought the yacht for himself and then sold it to his principal for a profit, the principal being unaware that he was buying the agents own property. Court held that the agent had to pay the profit to the principal even if the principal could not have earned the profit himself.

(iii) The agent must disclose to the principal any opportunity or information which he comes across in his position as agent.

There was capacity to contract by the regents of the kabaka based on the law of agency them being agents by necessity and under **the constitution of Buganda**[82] though as per the analysis that is yet to be discussed below, we shall see these regents failed in their duty of acting in good faith

Consent

The Buganda agreement of in 1900 which was signed between two antagonistic camps and this include the British represented by the commissioner sir Harry John stone and the Kabaka regents who represented the infant king Daudi Chwa II. The question is, was the Agreement based on the true mentalities of a valid contract? The answer is provided below as regards to the vitiating factor of mistake as to fact that renders a contract voidable hence rescinding as a remedy. In order to appreciate this vitiating factor in aspect of the 1900 Buganda agreement, we need to know what mistake entails.

In conclusion therefore having analysed the essential ingredients of a contract "offer, capacity, intetion, acceptance, and consideration" towards the 1900

[81] (1887)

[82] Article 3

Buganda. There was offer"British represented by sir Harry Johnson as the offeror and Buganda represented by regents as offeree",there was no capacity because Kabaka Daud Chaw II was still a minor and acceptance was their because it was made by the regents not the king him self, consideration was there because the King and chiefs where given Land . Thus, this makes a contract voidable hence in turn making not a good contract. And this is why Kabaka Muteesa rose up in 1953 to make the 1953-55 crisis inevitable in order to revive back the aggrement for amendment because it was out of fraud measures and selfish intrest

Mistake as a vitiating factor as regards to the 1900 Buganda agreement

The Buganda agreement of in 1900 which was signed between two antagonistic camps and this include the British represented by the commissioner sir Harry John stone and the Kabaka regents who represented the infant king Daudi Chwa II. The question is, was the Agreement based on the true mentalities of a valid contract? The answer is provided below as regards to the vitiating factor of mistake as to fact that renders a contract voidable hence rescinding as a remedy. In order to appreciate this vitiating factor in aspect of the 1900 Buganda agreement, we need to know what mistake entails.

Mistake is sometimes considered to be a difficult area of law. There are certainly a number of reasons for this. It is quite closely related to the area of agreement since agreement is said to depend on a consensus ad idem, a voluntary arrangement mutually agreed by both parties. If a party enters a contract on the basis of a mistake, then this is said to negate the consensus ad idem, since any consensus could not be genuinely held in that case. Mistake, certainly common mistake, is also closely related to misrepresentation, since a party might claim that they are mistaken owing to the misrepresentation of

the other party, however innocent. In consequence, a claimant sometimes pleads both claims. [83]

The first distinction to make in mistake, whether it is the common law or equity that provides the remedy. For the common law to have any effect the mistake must have been an 'operative'one. It must have been a mistake fundamental to the making of the contract such that the contract was only formed because of the mistake. If the mistake is recognised as being 'operative' then the contract will be void abinitio. Not only will the parties be returned to their pre-contract position, but also any further rights coming out of the contract will have no effect, because the contract is as though it had never existed. If the court cannot accept that the mistake is operative, in other words the mistake was not the reason that the contract was formed, then common law rules can not apply but a solution in equity is possible, subject to the discretion of the court and the normal maxims. Recent case law, however, casts some doubt on this. If equity can be applied then the effect is for the contract to be voidable. The contract could continue but a party to the contract who has been the victim of the mistake can avoid his/her obligations and the contract may be set aside. There are basically three classes of mistake, although these themselves sub-divide to cover more specific circumstances.

- A 'common mistake's one where both parties have made the same mistake. The mistake can concern either the existence of the subject matter of the contract, or its quality, with different consequences depending on which it is.
- A 'mutual mistake 'again involves both parties being mistaken, but at cross-purposes over the nature of the agreement rather than making the same mistake.
- A 'unilateral mistake's one where only one of the parties is mistaken. By implication the other party will usually know of the other party's mistake and be set to take advantage of it.

[83] Introduction to law of contract by Prof. Ben Twinomugisha

Common mistake.

Res extincta This involves a mistake about the existence of the subject matter of the contract at the time that the contract was formed. If at that time the subject matter of the contract did not exist then the mistake is an operative one, because clearly neither party to the contract would contract for something that did not exist, and the contract will be void as per the case of Cooper v Phibbs (1867) The House of Lords agreed to this but also granted Phibbs a lien in respect of the considerable expense he had gone to in improving the property. Although the case was decided on equitable rather than common law principles, law Lord Atkin in Bell v Lever Brothers refers to it as an example of res sua. The case can be seen as res sua. Equity was applied and the contract declared voidable rather than void because firstly Cooper had only an equitable interest in the property, and secondly Phibbs had spent money on it.

Mutual mistake

A mutual mistake occurs where the parties to the contract are at cross-purposes over the meaning of the contract. One of the problems here is that it is doubtful whether any meaningful and sustainable agreement has ever been reached. What the courts will do is to try to make sense of the agreement that does exist in order that it can continue. To do this they will implement an objective test and will try to identify a common intent if one exists. If, however, the promises made by the two parties so contradict one another as to render any performance of the agreement impossible then the court will deem that an operative mistake exists and the contract will be declared void. Raffles v Wichelhaus (1864), court held that the contract could not be completed and was declared void. So, ambiguity surrounding the subject matter of the contract may well make a mistake operative and result in the contract being declared void.

Unilateral mistake

Introduction The cases in unilateral mistake show two particular lines: the mistake will either be as to the terms of the contract or will be as to the identity of the other party to the contract. In either case the significant point is that only one of the parties to the contract is actually mistaken, hence unilateral mistake.

Mistaken terms, if one party to the contract makes a material mistake in expressing his/her intention and the other party knows, or is deemed to know, of the mistake then the mistake may be operative, with the result that the contract may be void**. Hartog v Colin & Shields (1939)** court declared the contract void for the mistake.

- One party to the contract is genuinely mistaken over a material detail that had the truth been known would have meant (s)he would not have contracted on the terms stated. (This was clearly the position of the sellers in the above case.)
- The other party to the contract ought reasonably to have known of the mistake. (Again, the court accepted in the above case that the buyers were taking advantage of a situation that they would have been aware of because of usual custom in the trade.)
- The party making the mistake was not at fault in any other way.

Sybron Corporation v Rochem Ltd (1984) The Court of Appeal held that it was the manager's breach of duty that had induced the company to believe that it was obliged to grant him the pension. It had done so under a mistake of fact. **Kings Norton Metal Co. Ltd v Edridge, Merrett & Co. Ltd (the Kings Norton Metal case) (1897**), The court was not prepared to void the contract for mistake. The Metal Co.was not so much mistaking the identity of Wallis, since Hallam & Co.did not exist, as mistaking the creditworthiness of Wallis with whom it had in fact contracted.

Cundy v Lindsay (1878), On appeal the House of Lords held that the contract was void for mistake. The mistake was operable because If the one

party is to be able to claim that the mistake is to be considered material then the other party to the contract must have known of it.

Mistaken identity and face-toface dealing Where a party negotiates a contract in person then the party is deemed to be contracting with the other party who is physically present at the negotiations, whatever the identity that the other party assumes. In this way the mistake is not as to the identity but as to the creditworthiness of the other party. This is not material to the forming of the contract so the mistake is not operative and the contract cannot be void.

One case actually cast doubt on this principle and caused some confusion.

The case is seen as being either decided on the particular facts or indeed wrongly decided, andLindsay’s were able to show that the identity of the party trading from 37 Wood Street was material to the formation of the contract. Unlike the Kings Norton Metal case, there was a party here with whom the claimants wished to contract. The third party acquired the goods from Blenkarn without any title.

Ingram v Little (1960) The Court of Appeal, strangely, accepted that the mistake as to identity was material to the contract, as it was shown that the ladies initially rejected the cheque, and so relied on the identity of the important local figure

The case is seen as being either decided on the particular facts or indeed wrongly decided, and Lindsay’s were able to show that the identity of the party trading from 37 Wood Street was material to the formation of the contract. Unlike the Kings Norton Metal case, there was a party here with whom the claimants wished to contract. The third party acquired the goods from Blenkarn without any title.

Cundy v Lindsay since the finance company never saw the rogue, dealt only with documentation, and the salesman in the showroom was not their agent,

but only an intermediary.The rogue gained no title that he could pass on,and the innocent purchaser had to bear the loss.The House of Lords agreed.

If a mistake has been shown to be operative then the common law rather than equity may apply. If it is not an operative mistake and therefore not void, then an equitable solution may be sought in one of three ways:

- rescission of the contract, with the contract being set aside and new terms substituted
- a refusal to grant the other party's claim for specific performance of the contract
- rectification of a document containing a mistake which is material

If the party claiming rescission can show that it is against conscience to allow the other party to take advantage of the mistake then the court may allow rescission, though usually at the same time substituting more equitable terms as an alternative.

In appretiatiating the law brought by mistake as a vitiating factor to the aspect of 1900 Buganda agreement, there was mistake as to identity basing on the principle of Delegation "Deligatus non deligee", on grounds that the Kabaka regents where not delegated by the king to sign the 1900 Buganda agreement. In linage to the case of Ingram vs. Little the British intended to sign with the Kabaka of Buganda not the regents, same also basing on the law of Capcity as per section 10 of the contract act 2010 they couldn't contract with the minor Kabaka Daudi Chwa 11 thus inturn makes the contract voidable. This why the Kabaka MutesaII refused to honour the 1900 Buganda agreement because it created more harm than good, it involved fraudulent measures of representation of the Regents i.e Stanslus Mugwanya, Apollo Kagwa, Zakaria Kisigili etc who signed the agreements for their benefits other than representing Buganda kingdom.

It was the mistake as to identity where the regents signed the agreement without the consent of the King that made the Mutesa II to reject the agreement calling for recession hence leading to the 1953 – 55 Kabaka crisis.

Significantly the 1953 reform would demonstrate the dependence of the colonial government on the legal cooperation of the Kabaka with the ascendancy of Mutesa II as Kabaka, his strength was bound to be the cause of friction between the Buganda government and the colonial government. Educated at Cambridge and already offended that he was not treated with honor at the coronation of Queen Elizabeth II in 1952, the reliance on Mutesa II to promote colonial government policy was unlikely to be a happy circumstance. Nonetheless Mutesa II was keen to support the March 1953 reform but where the Cohen policy in its strong belief that Uganda must develop as a unitary state threatened the tribal loyalties. This would result in tribal institutions including the Kabakaship declining in importance. This factor and concern would spark off the crisis in Buganda that came to be known as the Kabaka crisis of 1953 – 1955.

In conclusion therefore the I900 Buganda agreement was not a good agreement because of the British mistakenly contracted to the regents other than the king himself making the contract voidable hence causing the 1953-55 crisis leading to the 1955 Namiremmbe agreement that interpreted, innovated some clauses in the 1900 Buganda agreement hence rescinding it.

MISREPRESENTATION AS A VITIATING FACTOR IN THE SINGING OF THE 1900 BUGANDA

in so relating to the law of misrepresentation as vitiating factor to the 1900 Buganda agreement that was signed by the British represented by Sir Harry Johnson and Buganda represented by the regents on behalf of the infant king Kabaka Daudi Chwa II, the principle of vitiating factor is need to be first discussed in full and thus relating it to the Buganda aggrement of 1900 hence in turn rendering it voidable.

A misrepresentation is a false statement of fact made that has the result of inducing the other party to enter a contract. If a misrepresentation is shown to have occurred, the effect will be that the contract becomes voidable. This

means that the party who was induced into the contract as a result of the misrepresentation may choose to rescind the contract, but does not necessarily have to. Misrepresentation is based mainly in contract law, and has a relationship with other areas of contract that this module guide will explore, such as terms and mistake. There is also the negligent element of misrepresentation, which is based in tort. Therefore, an understanding of tortious principles will be helpful in understanding the law.[84]

A misrepresentation is a form of statement made prior to the contract being formed. There are two types of statement that can be made before a contract forms, these will either Form part of the contract or not form part of the contract, therefore becoming a representation.[85]

The importance of this distinction has been explained in the chapter relating to terms, so for a full understanding it is recommended that you have studied that chapter. But to recap, if a statement is made that is considered to be a term, in the event of this statement being breached, the aggrieved party would have a remedy under a breach of contract. However, if a statement is not considered to be a term, it will be held to be a representation, meaning if that representation is not true, the remedy will be under the law of misrepresentation. In order to distinguish between the two, the courts will consider the intentions of the party.

Intention: The courts will attempt to give effect to the parties' intention insofar as this is possible. This will be an objectively applied standard. There are a number of presumptions related to when or how a statement is made which will help the courts when they are attempting to ascertain whether a statement is a term or a representation (Heilbut, Symons & Co v Buckleton[86]). These factors were covered in detail in the chapter on terms,

[84] introduction of law of contract by Ben twinomugisha
[85] Law of contract by Bakibinga
[86] [1913] AC 30

therefore this chapter will provide a simple overview of the factors. For more information on this you should refer to the chapter on terms.

Statement is reduced to writing, if a statement has been reduced to writing, there will be a strong presumption that this will form a term of the contract, as opposed to a representation. The courts are unreceptive to such claims, as per the 'parole evidence' rule. Therefore, when there is a statement which has not been reduced to writing, the presumption may be that it is a representation. Be careful, as oral statements can still form a term of the contract; you should still consider the other factors alongside this **one.**

Specialist skill or knowledge: If the statement is made by a party who has, or claims to have, specialist skill or knowledge, there will be a presumption that this statement is a term. The cases of Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd [1965] 1 WLR 623 and Oscar Chess v Williams [1957] 1 WLR 370 are good authorities for this. In Dick Bentley, the statement was held to be a term because it was made by a car dealer who would claim to have specialist skill or knowledge. However, in Oscar Chess, the statement was made by a private seller who had no real specialist skill or knowledge.[87]

In order for a representation to become a misrepresentation, it must be first proven that it was an unambiguous, false statement of fact. In order to prove this misrepresentation is actionable, it must be shown that this representation induced the claimant to enter the contract.

Unambiguous, false statement: False and unambiguous Ascertaining whether a statement is false in the context of misrepresentation is not as straightforward as a question of whether the statement is true or false. The degree of falsity is a relevant consideration. The case of Avon Insurance plc v Swire Fraser Ltd [88]ruled that the test to apply is whether or not the statement

[87] Introduction to contract law by Prof. Ben Twinomugisha

[88] [2000] 1 All ER (Comm) 573

is "substantially correct". This involves a consideration of the inducement of the individual to the contract. If a statement is made that was technically false, but most of the statement was true, the statement would hold to be true so long as the true part of the statement induced the claimant into the contract, as opposed to the false part. Whether or not the false statement is unambiguous refers to how the claimant interpreted the statement. If, on a reasonable construction, the statement was true, however, the claimant interpreted the statement in a different way which rendered the statement false, the statement would not be unambiguously false, and the claim would fail.

Statement: The word 'statement' has been broadly interpreted. 'Statement' does not just refer to a verbal statement; it has been held that conduct can amount to a statement for the purpose of misrepresentation. The case of Curtis v Chemical Cleaning & Dyeing co Ltd [1951] 1 KB 805 outlined this fact. An example of this can be found in Gordon v Selico (1986) 278 EG 53, where the concealment of some dry rot during an inspection of a property was held to be a statement which misrepresented the fact that the property was free of dry rot.

Silence or non-disclosure will not amount to a statement, it is clear that there must be some kind of positive conduct to constitute a statement. Therefore, although in Gordon v Selico the party was silent as to the existence of dry rot, the conduct went beyond merely remaining silent; there were active steps to conceal this fact.

Half-truths: A misleading half-truth will amount to a misrepresentation. A misleading half-truth is a true statement which is misleading due to all relevant information not being revealed. Take the case of Nottingham Patent Brick & Tile Co v Butler (1885) LR 16 QBD, where a solicitor was asked whether any restrictive covenants burdened some land. The solicitor answered that he was not aware of any, which was technically true, as he had not yet checked. Of course, when he checked, there was some restrictive

covenants. Therefore, the statement was technically true, but only half-true and misleading, meaning it would be construed as false.

In contracts which are negotiated over a long period of time, any statements made of a volatile nature can be considered “continuing statements”, with which extreme care should be taken.

Contracts of utmost good faith: Certain types of contracts will impose a higher duty of disclosure than under normal circumstances. This is due to the nature of the relationships between the parties. The most common example of such a relationship is that between an insurer and the insured. It is the insured’s duty to disclose all material facts at the time of the formation of the contract for insurance and failure to do so will result in any form of claim under that insurance contract failing. This differs greatly from the usual duties of contracting parties, whereby there is no positive duty to disclose any facts (Keates v The Earl of Cadogan (1851) 10 CB 591).

False statement of fact: This section will be concerned with whether or not the statement was of fact. This is a key component of misrepresentation, as a claim for misrepresentation will not be actionable if the statement made was merely an opinion or a suggestion. Statements of opinion: As mentioned above, the general rule is that a statement of opinion is not a fact.

Statements of intention: A misrepresentation as to future intention is usually not actionable for misrepresentation, as it will not amount to a statement of fact. The statement of future intent will not be held to be a fact even if the defendant intentionally changes their mind as to their intentions (Inntrepreneur Pub Co v Sweeney [2002] EWHC 1060 (Ch)). A statement of future intention made with absolutely no intention at the time of the statement, however, will amount to a misrepresentation, as seen in Edgington v Fitzmaurice (1885) 24 Ch D 459.

Statements of law A statement of law which is incorrect will amount to a false statement of fact for the purpose of misrepresentation. Pankhania v Hackney

London Borough [2002] NPC 123 concerned the purchase of a property to be used as a car park. There was a statement that the occupier of the car park could be evicted within three months under law. This was incorrect, and therefore classified as a false statement of fact.

The representation must be known to the representee. A representation will not be actionable and will not have induced the representee unless the representee was aware of the representation. Horsfall v Thomas (1862) 1 H & C 90. It was held it could not amount to a representation as the representee never inspected the product and was therefore never aware of the misrepresentation.

What type of misrepresentation has been made?

Categorising the type of misrepresentation made is one of the most complex parts of the law of misrepresentation, as there are four different types:

Fraudulent Misrepresentation - Common Law Tort of Deceit

Negligent Misstatement - Common Law via Hedley Byrne v Heller

Negligent Misrepresentation - Statutory under the Misrepresentation Act 1967

Innocent Misrepresentation - Statutory under the Misrepresentation Act 1967

The importance of these distinctions will become clear when each one is assessed, as they have differing burdens of proof and remedies. The distinctions are based upon the intention of the statement maker when the misrepresentation is made. Types 2 and 3 will be dealt with under the one heading of “Negligent misrepresentation”, the common law and statutory differentiation affect the remedies available.

Fraudulent misrepresentation, the significance of a misrepresentation being classified as a fraudulent one is that the measure of damages may be greater

under certain circumstances. There are two remedies available for fraudulent misrepresentation: recession and damages.

Representees should attempt a claim for fraudulent misrepresentation with caution, as the courts impose a much higher standard of proof due to the serious allegations. There may also be penalties in the event the claim is not made out. A fraudulent misrepresentation was defined in Derry v Peek (1889) 14 App Cas 337 as a false statement which is 'made knowingly, or without belief in its truth, or recklessly, careless whether it be true or false'.

In order to assess whether a statement has been made fraudulently, you should consider whether:

- **The statement maker knows that the statement he has made is false**
- **The statement maker has reasonable grounds to believe his statement is true even if it is false**
- **In the case of a, there will clearly be a fraudulent statement**

Thomas Witter Ltd v TBP Industries Ltd [1996] 2 All ER 573 clarified that where a statement is made where the statement maker has no idea whether or not it is true or false, this statement would be fraudulent due to the recklessness asserting it is true when it may not be.[89]

True statements which become false, as we have discussed earlier in this section, some statements made may be true at the time of the statement, but later become false. In those situations, it was established that there is a duty for the statement maker to make the representee aware of this change. However, for the purposes of ascertaining the type of misrepresentation, would a failure to update the representee be classed as a fraudulent misrepresentation? In With v O'Flanagan [1936] Ch 575 it was suggested

[89] Law of contract by Prof. David Bakibinga

that misrepresentation as a result of a change of circumstances might result in either a fraudulent misrepresentation or a negligent one. Here are the circumstances in which this can happen:

Fraudulent: The statement maker is aware there is a duty to notify the representee of a change in circumstances (Banks v Cox (No 2) unreported)

Negligent: The statement maker is not aware there is a duty to notify the representee of a change in circumstances. A negligent misrepresentation is made out where the statement maker has belief in his statement, but has been careless in reaching this conclusion. in the case of Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465. As per Caparo Industries plc v Dickman [1990] 2 AC 605, in order for a claim in negligence to be successful, there must be a special relationship between the parties so that there would be a duty of care which arises. Subsequent case law which considered negligence of misrepresentations in the context of duty of care concluded there would be a duty of care owed if there was an 'assumption of responsibility' on the part of the statement

Innocent misrepresentation, With the development of the Misrepresentation act the claim for innocent misrepresentation is extremely limited. A claim for innocent misrepresentation will arise when a claim for negligent misrepresentation under the Misrepresentation act has failed. The remedy for an innocent misrepresentation will usually be rescission of the contract.

In March 1900, this agreement formed the basis of British relations with Buganda, the Kabaka (King) was recognised as ruler of Buganda as long he remained faithful to her Majesty, the Lukiko (council of chiefs) given statutory recognition. This was following another agreement signed in 1894 in which the Kingdom of Buganda, then known as Uganda, was declared a British Protectorate.This agreement is also known as the Buganda Charter of Rights and was upheld for more than 50 years. The undersigned, to wit, Sir Henry Hamilton Johnston, K.C.B., Her Majesty's Special Commissioner, Commander-in -Chief and Consul-General for the Uganda Protectorate and

the adjoining Territories, on behalf of Her Majesty the Queen of Great Britain and Ireland, Empress of lndia, on the one part; and the mentioned Regents and Chiefs of the Kingdom of Buganda on behalf of the infant Kabaka (King) of Buganda, APOLLO KAGWA,STANSLUS MUGWANYA, , MBOGO NOHO, ZAKARIA KIZITO, KANGAWO, SEBAUA, POKINO. YAKOBO, KAGO. PAULO, MUKWENDA, KAMUSWAGA OF KOKI, and the chiefs and people of Uganda, on the other part: do hereby agree to the Articles relative to the government and administration of the Kingdom of Buganda.

The 1900 Buganda Agreement was not a suitable agreement on grounds of misrepresentation that renders it voidable agreement, the Kabaka of Buganda by that time was young and thus all the regents signed it on promise of Land and other benefits. Not only that, also signed it on the infant king recognition plus the Namasole as seen in article 6 and 7of the 1900 Buganda agreement, hence in turn made the regents to sign it on behalf of Kabaka Daudi Chwa II. Per those statement induced the regents to enter into the contract which in turn made the Baganda to call it the Agreement of benefit of Whites and the Regents but not the affiliations of Baganda hence caused the 1953 crisis on grounds of interpreting and rescinding the 1900 Buganda agreement which in turn called the 1955 Buganda Agreement to recede and interpreted various articles of 1900 Buganda agreement

Between 1953 and 1955 there was major unrest and discontent in Uganda, part of the British-administered Uganda Protectorate, following a speech in which the British Secretary of State for the Colonies made a "passing reference" to the possibility of East African federation. The incident prompted widespread calls for Bugandan independence as the only protection against British overreach.

In order to force a resolution to the deepening political crisis, the Governor of Uganda, Sir Andrew Cohen, invoked the Uganda Agreement (1900) and demanded that the Kabaka (Mutesa II) fall into line British government

policy which favoured the continuation of a single, unitary, Ugandan state. The Kabaka refused. As a result, the British Government withdrew its recognition of Mutesa II as Uganda's native ruler under Article 6 of the 1900 Uganda agreement and forcibly deported Mutesa to Britain. News about Mutesa's deportation severely shocked the Baganda, leading to a constitutional crisis. Cohen's preference was for a new Kabaka to be installed immediately, but this proved impossible, necessitating a fuller negotiated outcome.

The Buganda Agreement, 1955 was made on 18 October 1955 between Andrew Cohen, the governor of the Uganda Protectorate, and Mutesa II, Kabaka of Buganda. The agreement facilitated Mutesa II's return as a constitutional monarch, ending the Kabaka crisis that began when the Kabaka was exiled to England by Cohen in 1953. It amended the earlier 1900 Uganda Agreement. The final text reflected the agreed outcomes of the Namirembe Conference.

Following a successful Bugandan delegation to London, new negotiations on the future of Baganda took place in June to September 1954 at Namirembe, with the Australian Sir Keith Hancock (Director of the Institute of Commonwealth Studies in London) acting as the mediator and Stanley Alexander de Smith as Secretary. Initially, Hancock met solely with a constitutional committee selected by the Lukiiko. The four main issues considered by the committee were the degree to which Buganda was 'independent' under the 1900 Agreement; the balance between federalism versus the need to preserve a unitary Ugandan state; the role of the Kabaka; and the participation of Buganda in the Uganda Legislative Council (LEGCO). Discussions were lengthy, and while there was some progress, it was clear to Hancock that the Committee in particular held firm views in favour of a federal model for Buganda that would be at odds with the British emphasis on a unitary state.

The Namirembe Conference proper opened on 30 July, with both the Committee and Cohen represented. On the crucial issue of federalism,

Cohen produced a paper in early August arguing for greater devolution to Buganda, without going as far as federalism. At the same time, the non-African members of LEGCO agreed to give up one European and one Asian representative seat and transfer these to African members.

By the time the conference closed in early September, it had agreed a number of recommendations, including that "the Kingdom of Buganda... should continue to be an integral part of the Protectorate; that the conduct of public affairs in Buganda should be in the hands of Ministers; and that, while all the traditional dignities of the Kabaka should be fully safeguarded, Kabakas in future should be constitutional rulers bound by a Solemn Engagement to observe the conditions of the Agreements regarding the Constitution and not to prejudice the security and welfare of the Buganda people and the Protectorate". A number of constitutional changes to the Governments of Uganda and Buganda and to LEGCO were agreed at the same time, increasing African representation, and progressing Cohen's reformist goals. As a result of these changes, Buganda would end its boycott of the reformed LEGCO. Strictly speaking, the return of Mutesa himself to Uganda was outside the conference's terms of reference. However, the Kampala High Court's finding that the British Government's reliance on Article 6 of the Buganda agreement was "mistaken" – coming shortly after news of the agreement at Namirembe, but before the Agreed Recommendations could be published – put pressure on Cohen to concede. In November, he reversed the British Government's position and agreed to Mutesa's return, contingent on the adoption and implementation of the Namirembe recommendations.

Duress and undue influence as the vitiating factor rendering the 1900 Buganda agreement a voidable agreement.

Duress is a common law area which was traditionally associated with intimidation that was real or at least sufficiently real and threatening to vitiate

the consent of the other party, and mean that (s)he acted not by free will. Cumming v Ince (1847) An inmate in a private mental asylum was coerced into signing away title to all of her property or she was threatened that the committal order would never be lifted. The contract was set aside. It was not made of her free will. The law developed so that the threat vitiating the contract was associated with violence or even death. **Barton v Armstrong (1975)** A former chairman of a company threatened the current managing director with death unless the managing director paid over a large sum of money for the former chairman's shares. It was shown in the case that the managing director was actually quite happy to buy the shares and would have done so even without any threat being made. Nevertheless, threats had been made and were therefore sufficient to amount to duress, vitiating the agreement they had reached as a result[90]

Threats to carry out a lawful action,however, cannot amount to duress **Williams v Bayley (1866)** A young man had forged his father's signature on promissory notes (IOUs) which he then gave to the bank,causing it to lose money.The bank then approached the young man's father and demanded that he should mortgage his farm to it to cover son's debt or it would prosecute the son.The threat was for lawful action and so could not amount to duress.However,the court was disturbed by the manner of the threats and accepted that they did amount to undue influence.

D.C. Builders v Rees (1965) In this case, as we have already seen, the Reeses forced the small firm of builders to accept a cheque of £300 in full satisfaction of the actual bill of £462 or take nothing. They had no choice in the circumstances but to accept. Lord Denning considered the issue of inequality of bargaining strength and felt that coercion in such circumstances justified avoidance of the agreement

Lord Scarman then also accepted the basic doctrine in Pao On v Lau Yiu Long (1980) 'there is nothing contrary to principle in recognising

[90] Law of contract by Prof. David Bakibinga

economic duress as a factor which may render a contract voidable provided always that the basis of such recognition is that it must always amount to a coercion of will which vitiates consent'.Lord Scarman also outlined the test for coercion 'whether the person alleged to have been coerced did or did not protest ...did or did not have an alternative course open to him ...was independently advised ...took steps to avoid it'. The doctrine and the tests deriving from it have been subsequently and satisfactorily applied.[91]

Allcard v Skinner (1887) A woman belonging to a religious sect was persuaded to join a closed order and to give all of her property up to the order. When she later left the order, she then tried to recover railway stock that she had owned. While it was accepted that she had been subjected to undue influence her action failed because she waited until five years after leaving the order before claiming, and 'delay defeats equity'.[92] Royal Bank of Scotland plc v Etridge (No 2) and other appeals (2001).The Lords appear to have decided that there are not two types of undue influence.[93]Presumed undue influenceis merely an evidential'lift'in helping prove undue influence.They also expressed dislike with the words 'manifestly disadvantageous'and preferred instead the 19th-century language'transactions which are not to be accounted for on terms of charity,love or affection'.They considered that it was out of touch with life to presume that every gift from a child to a parent was undue influence.They also thought that most cases where a spouse guarantees a husband's business debts would be explicable and are reasonably accountable.This view might lead to fewer cases being successful.The Lords issued general guidelines as follows:

1. A bank should be put on enquiry whenever a wife offers to stand surety for her husband's debts or vice versa, or even in the case of unmarried couples where the bank was aware of the relationship.

[91] Law of contract by Prof. David Bakibinga
[92] Law of contract by Ben Twinomugisha
[93] cc

2. A bank should take reasonable steps to satisfy itself that a wife had been fully informed of the practical implications of the proposed transaction. This need not mean a personal meeting if a suitable alternative was available and the bank could rely on confirmation from a solicitor acting for the wife that he had advised her appropriately. But if the bank knew that the solicitor had not properly advised the wife or ought to have realised that the wife had not received appropriate advice then it was risk of being fixed with notice.

In appreciating the law of undue influence basing on the case of Hassanali vs Issa where the contract was redenderd voidable on grounds of a party dominating a will over the other party .The Buganda aggrement that was signed signed on the 10th of march 1900 between two antagonistic camps and these include Buganda and the British , the Buganda Agreement was signed between Harry Johnson the new Commissioner of Uganda on behalf of the Queen of England and the Chiefs of Buganda, that is; Stanslaus Mugwanya, Zakariya Kisingili and Apollo Kaggwa acting on behalf of the infant king Kabaka Chwa II of Buganda who had then attained the age of four years. The agreement had the element of undue influence on grounds that the British government of her Majesty knew that the king was infant, utilised this chanced and forced the regents who where chiefs that time to sign the agreement on behalf of the Buganda kingdom hence in turn rendering it voidable on grounds of duress as afore mentioned and on grounds of undue influence ,one party dominating a will over the other party to enter into a contract "it was the British who dominated a will over the Baganda Regents to sign the agreement without knowing or seeking advise" thus renders it a voidable contract. This was the reason why the Kabaka Mutesa II refused to accept the agreement because of the aspect of undue influence and duress, thus making the 1953 -55 Kabaka crisis inevitable.

The Namirembe agreement of 1955 that was made in Mengo it was there to rescide to the law's innovation of the 1900 Buganda agreement thus rendering it a voidable contract.

UNCONSCIONABLE BURGAIN IN THE BUGANDA AGREEMENT AS A VITIATING FACTOR.

An unconscionable bargain is a harsh transaction where one person is in a much stronger position than the other. The court may exercise equitable powers to vary or set aside the transaction. It must be shown that the stronger party knew that the innocent party was at a disadvantage.

Unconscionability is a field of contract law and the law of trusts, which precludes the enforcement of voluntary (or consensual) obligations unfairly exploiting the unequal power of the consenting parties. "Inequality of bargaining power" is another term used to express essentially the same idea for the same area of law, which can in turn be further broken down into cases on duress, undue influence and exploitation of weakness. In these cases, where someone's consent to a bargain was only procured through duress, out of undue influence or under severe external pressure that another person exploited, courts have felt it was unconscionable (i.e., contrary to good conscience) to enforce agreements. Any transfers of goods or money may be claimed back in restitution on the basis of unjust enrichment subject to certain defences.

Considerable controversy is still present over whether "iniquitous pressure" must actually be exercised by a defendant in order for a voluntary obligation to be voidable. While it seems clear that in cases of undue influence the pressure need not come from the person who may lose the contract, it is open to debate whether circumstances exist where an obligation should be voidable simply because the person was pressured by circumstances wholly outside a defendant's control.

One of the most prominent cases in this area is ***Lloyds bank ltd v bundy***, where Lord Denning MR advocated that there be a general principle to govern this entire area. He called the concept "inequality of bargaining power", while the American case espousing an equivalent doctrine, *Williams v. Walker-Thomas Furniture Co.* (1965), termed the issue one of

"unconscionability". Note that even though it is accepted that an "inequality of bargaining power" is relevant to the doctrine of undue influence, Lord Denning's broader dictum on a general equitable principle of an "inequality of bargaining power" was later rejected by the House of Lords in the 1985 case *National Westminster Bank plc v Morgan*.[94]

What are the three elements of an unconscionable contract?

If a court determines a contract is unconscionable, the court may do one of three things[95]:

- Void the contract;
- Void part of the contract; or.
- Modify the contract

In so reflecting to the 1900 Buganda agreement of 1900, that was signed between the two antagonistic camps of Buganda and the British. The British was represented by sir Harry Johnstone who brought harsh transaction policy to the regents to sign the contract i.e., Apollo Kagwa was taken abroad to fulfill his dream, same also persuading the reagents to sign and get land as per article 15 entail. This bargain was unconsociable because the Kabaka who is referred to as the Land owner didn't know any thing hence Buganda land became defacto in share oriented hence naming it milo because every one who got the share was in square miles.

The mailo Land that was distributed per article 15 of the 1900 Buganda agreement left many Baganda's misery with the effects of Busuulu and Evunjo laws. Kabaka Edward Muteesa wasn't satisfied upon the 1900 Buganda agreement because it was on a mentality of who is in stronger position than the other hence declaring it a harsh agreement which in turn caused tension and suspicion making the 1953-55 Kabaka crisis inevitable.

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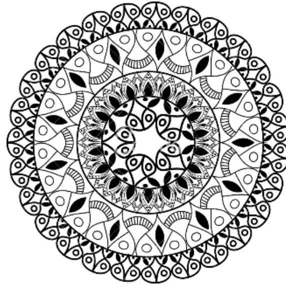
[94] *National Westminster Bank plc v Morgan* [1985] UKHL 2, [1985] AC 686, [1985] 1 All ER 821 (via BAILII

[9595] Law of contract by Chris Turner

The 1900 Buganda agreement, there was a harsh transaction unto the regents which made them to sign the agreement however much they didn't have authority to sign the agreement. Following the Namirembe agreement of 1955 also there was a harsh transaction, it was signed for Kabaka of Buganda to return back to Buganda. Per the analysis all agreements that are signed with Buganda always there is unconscionable bargain

CHAPTER THREE



Uganda Order- In- Council, 1902

1902 order in council formalized colonial rule in Uganda, and was the fundamental law of the Uganda protectorate. The order-in-council was an exercise of [power granted to his majesty's government under foreign jurisdiction act 1890 with respect to its foreign territories. The 1902 O-I-C dealt with several matters of constitutional significance ranging from provincial and administrative divisions, structures of governance, administration of justice and maintenance of law and order, to the applicable laws. As the fundamental law of protectorate, the O-I-C dealt with the following: -

First under section 1, it defied the territorial boundaries and provincial divisions of the protectorate. The divisions originally established by the O-I-C were 5;

a) Central province (districts of Elgon, Karamoja, Busoga, Bukedi)

b) B) Rudolf province (districts of turwel, turkana and dabossa)

c) Nile province (districts of doddinga, bar and shuli)

d) Western province (districts of Bunyoro, Tooro and ankole) and

e) Kingdom of Buganda and the islands pertaining thereto.

Second, under section 4-5, it provided for the office of the commissioner assisted by the deputy commissioner who was to take overall control, of the administration of the protectorate. He was the chief representative of his majesty's government (harry Johnston). The commissioner would later become the governor under the provisions of the 1920 O-I-C.

Third, under section 7, the O-I-C vested crown land in the commissioner. Under section 11, it defined crown land to mean all public land been subjected to the control of her majesty's government by virtue of any treaty, convention, or agreement and all land that might have been acquired for public service. Thus, the control of the part of land in Uganda was vested o\in the colonial government.

Fourth, under sections 8-10, the O-I-C empowered the commissioner to make laws and raise revenue subject only to special instructions of the state. The commissioner was under a duty to make laws for the peace, order and good governance of all persons in Uganda. By this power the commissioner was able to establish a regime of laws governing all the aspects of political, social, and economic life.

Fifth, under section 15(1), the O-I-C established a system of judicial power comprising of justice, in particular the high court with unlimited civil and criminal jurisdiction over all cases and all persons in Uganda. This court was called her majesty's court of Uganda. The o-i-c conferred upon the commissioner the power to appoint and dismiss officers of the high court, which power was vested directly in HMG.

Sixth, under section 15(2), the o-i-c contained a reception clause which empowered the commissioner to apply any law of the United Kingdom in Uganda. This sis how the Evidence Act capp.43, contracts act cap. 75, companies act cap. 85, penal code act cap. 106 from India came to Uganda. The reception clause is of legislation as 11 august 10902.

Seventh, under section 20, the o-i-c, contained a repugnancy clause'. Section 20(a) of the o-i-c provided; "in all cases, civil and criminal, to which the native are parties, every court shall be guided by native laws so far as it is applicable and is no repugnant to justice and morality or inconsistent with any order-in-council, or any legislation or rule made under any ordinance."

The clause recognized native laws and customs subject only to whether they were in confirm with the rules of good conscience, natural justice and morality. It was intended to remove those native laws and customs that ere considered backward and uncivilized. The major problem was that the negative aspects were as perceived in the eyes of the colonial power. In other words, it was a subjective test that was applied to the moral and standard of the English person. The problem with the subjectivity is that many customs which were central to the social fabric of the natives' communities in the British colonies were rendered void by the stroke of the English pen.

An assurance of an implied application of the clause was in Kenyan case of R vs. Amkeyo [1914], where the question was whether the relationship between the accused and a certain woman in native custom was one of marriage in the strictest sense of the word. Chief justice Hamilton considered the features of the relationship as follows;

A woman was not a free contracting person in the relationship.

The woman was treated more in the form of a chattel

The relationship was potentially polygamous.

The other case on the repugnancy clause, from Tanzania, was Gwao bin kilimo vs. kisunda bin ifuti [1938]. A government tax Clarke named maange, in the ordinary cpurse of his duty collected shs1o= from the respobndent for poll tax, issued him with a false tax ticket, and converted the money to his personal use. Mange was tried in a criminal court and duly punished. The respondents then sued him in a civil court for the return of 10/= and obtained a decree in his favor. In execution of that decree the respondent caused to be

attached by court process two heads of cattle which was not property of the judgment debtor, mange, but his father, gwao, the applicant. Gwao successfully objected to the attachment in a lower court and appealed to the high court in order for his cattle to be returned to him. The issues before the high court were;

a) Whether there was an authentic true native law which allows the seizure of a father’s property in compensation for a wrong done by a son and

b) This native law was one, by virtue of s.24 of the 1920 Tanganyika o-i-c.

The Tanganyika high court held that although there was a custom to that effect, it was not of universal application and no Baraza of chiefs had ever enforces custom. Judge Wilson referred to art 24 of the o-i-c to reject such custom (restoration of cattle).

Another case from Uganda, that lends interpretation to this clause is Mwenge vs. Migadde [1933], where the question related to the existence and continuation of customary tenure in Buganda and the inalienability of such Butaka in ancient customs of Buganda, judge Gary considered the provisions of the 1900 Buganda agreement and legislation passed by the Buganda government [1908] land law to hold that the practice showed that Butaka tenure no longer existed. [96] The British court and as long as substantial justice is achieved, there was o good ground for overturning the decision of the native court.

Eighth, under sections 24-25, the o-i-c provided fir the commissioner to order the removal or deportation of any undesirable person from the protectorate

[96] Its to be noted that the repugnancy clause survived into post- colonial period in form of the judicature act of 1962 qand 1967 and the judicature statute of 1966. See the case of best kemigisha vs. Mable komuntale [1998]. The question is whethrethe validiy of customs should be determined agaimst the retest of thje repugnancy doctrine.

in order to preserve peace, order and good governance. This was a power that was used on general occasions in order to deal with anti-colonial sentiments in the protectorate, including prominently, the bataka agitators. In order to give effect to this power, the commissioner enacted the removal of undesirable native's ordinance, 1907 and the deportation ordinance, 1908. The removal and deportation laws did now allow for the appeal against or review of the order of the commissioner.[97]

Application of the 1902 o-i-c in terms of constitutionalism

The o-i-c is very important not only because it is the first legal instrument to establish a frame work for the governance of the whole of the protectorate, but also because of the elements it put in place. Many of those elements influenced politics and government throughout the colonial period and the post-independence period. The legacy of the o-i-c is very important. At the same time the o-i-c represented a negation of the idea of constitutionalism, even those ideas which had developed in the UK at the time. e.g.

- It didn't respect the doctrine of separation of powers- the executive officers of the government exercised both legislative and judicial powers;
- -it didn't recognize the rule of law applying double standards and open discrimination b between indigenous people and the Europeans.
- The o-i-c gave prominence to state power, and did not define the rights of the individual. It was also highly coercive as it did not allow for the alteration of state power especially officer-bearers of elections up to 1962.

[97] Deportation ordinance was amended four times between 1908 and 1956 binaaisa qho would not be until 1996 that the deportation law(in post 196 as cap 46_ was successful challenged and declared it constitutional; ibingira and ors verses Uganda [1966].

Probably the question that has been significant in Uganda's constitutional history has been the relationship (primacy and supremacy) of the o-i-c and the kingdom agreements. We noted, in respect of the Buganda agreement, that the agreement would have such primacy over other laws of the protectorate.

In ***Nasanairi kibuka vs. Bertie smith [1908]*** where the issue related to the legislative powers reserved to the kingdom under Buganda agreement vis a vis the o-i-c. The judge carter j, held that the crown could not acquire powers in Buganda which had not been granted by the 1900 agreement.

"*As I understand the agreement, it is not to be regarded as taking away any right or power of the kabaka except by its express provisions, therefore whatever powers were his before remain with him except as far as they expressly taken away of limited. A sovereign state has undoubtedly the power of; legislating and thereof is no agreement prior to the 1900 agreement, so far as am aware which takes away this right*"

Thus because of the element, Buganda was at that time regarded as retaining still a measure of her original sovereign which not even the o-i-c issued under the 1890 FJA could not take from her.

- Katozi vs. kahizi [1907] involved a conflict between the terms of the 1901 ankole agreement which reversed certain judicial powers in their native courts, and the terms of the o-i-c which on establishing the high court claimed to give it full jurisdiction within the territory. The high court ruled that the o-i-c could not alter the existing agreements. this judgment was supported by secretary for state for the colonies who wrote that:
- "The validity of the Uganda o-i-c 1902 is no far as it nullifies this reservation is consequently open to question. In these circumstances, I am advised that the Uganda o-i-c 1902 should be construed in such a manner as not to impair the rights reserved."

- R vs Besweri kiwanuka [1937] where the issue at hand was whether the high court set up under the o-i-c had jurisdiction over Buganda. The Buganda agreement had not explicitly stated whether or not this would be the case. As the katozi case, the issue was referred to secretary of state for the colonies who would reply asserting that the 1902 o-i-c was superior to the agreement. The high court held that by the 1902 o-i-c, her majesty's government had made manifest the extent of her jurisdiction in Uganda such manifestation was to be regarded as an act of state which was unchallengeable in any British courts
- In Mukabwa and Mukubira and others [1954], the nomination of4 persons to the Buganda lukiiko was challenged since the kabaka had been deported and in exile in the UK. The case was a disguised challenge of the legality of the deportation under the agreement. The court took the view that the agreement had not created contractual relations to which HMG was bound. In other words, the people of Buganda could not invoke the terms of the agreement as a treaty creating rights and obligations which could be binding on her majesty's government before her courts.

The cases sealed the debate about the superiority of the two instruments with agreement construed in the interests and political convenience of the colonial government. Their significance upon the political and government in Uganda is the legacy the provided of disregard of constitutional instruments/ idea in our subsequent history.

The imposition and operation of colonial rules/administration 1902-1920

Once the Buganda agreement had become concluded and the 1902 o-i-c promulgated the colonial government spend the next two decades consolidating its power and rule. Agreements similar to BA had been signed in between the two instruments (toro-26/6/1900 and ankole – 25/10/1900).

The administrative structures set up under the kingdom agreements were essentially similar to those in Buganda.

Outside the kingdom areas, in addition to the 1902 o-i-c the main instrument for the provision for the power and duties for the enforcement of authority in their areas of jurisdiction. The 1919 ordinance-:

a) Defined the powers, duties ad privileges of chiefs which were extremely extensive. The chief was a complete autocrat endowed with powers of an executive, legislative, prevention of crime, maintenance of law and order.

b) Subjected the chiefs took over all control and supervision of the colonial DC. The Ultimate authority was the colonial government. The DC had the power to hire and fire chiefs at will and were absolute rulers in own right (concern-insubordination, neglect of office then abuses of chiefly powers affecting the natives.

c) Enforced the office of chiefs with coercive instruments, designed to ensure loyalty, payment of taxes, and growth of cash crops on part f the subjects. In this respect, the colonial military and police apparatus paid scant regard to the protection of the people. The role of these traditional instruments was:

- Army too prevents foreign aggression and,
- Police to protect citizen's lives and property were not used in this regard and instead designated to suppress the natives.

Basic unit; local administration was divided along ethnic lines as part of the policy of divide and rule. Indeed, by different ethnic communities the nationalistic (inter tribal) contacts was minimized by the colonial

government. Outside the kingdoms, the mode of pacification often took a sub-imperialistic mode the most prominent in the person of ***semei kakungulu***. While a favorite mode of colonial penetration, it served to ethicize and polarize relations between Buganda and these communities.

The two decades of early colonial rule, mechanisms of government and administration had been set up virtually throughout the protectorate. Those mechanisms duplicate the pattern which had been laid in the BA and o-i-c. Thus, so many principles of constitutionalism were negated in these early instruments; the same would be the cause in the legislating passed during this period to govern the protectorate.

The legacy of this process was to create omnipotent's chiefs whose powers permeated virtually all aspects of social lives of their subjects. This process of localization of colonial autocracy had even more profound effects on the structures of government but also at a local level. For the two decades, the governor was an absolute at the center level, parallel by the DC at the district level and the chief at the local level. It has been argued that it would have been impossible for the British to have established and consolidated itself as a colonial power and to have recognized the basic rights and freedoms to have survived as a power in Uganda.

Thus, despite the reforms that took place from 1920 onwards, the early modus operandi set in place the colonial system of government left a marked impact on the evolution of the constitution state in Uganda and that impact was much more profoundly felt at the local level of government and indeed it took over 8 years to achieve what could be described as a fundamental reform in the operation of local government in Uganda-NRM. In addition, the powers and privileges and character of authority established in the early colonial period continued to exert its influence over the future ways in Uganda government was approached in Uganda. To date we continue to be haunted by the legacy of autocratic government set in place during this period.

Uganda order in council, 1920

Between the year 1900 and 1920, the commissioner's powers were absolute and was largely a period of complete autocracy. The 1920 o-i-c introduced significant developments especially as regard the organs of government. The preamble stated inter alia:

*"**Where** it is expedited that there should be an executive council and legislative council, and that the legislative council should have power to make ordinances for the peace a, order and good governance of all persons and that the same council should exercise such powers as hereto before have exercised by the commissioner."*

The main changes introduced by the 1920 order in council are:

It formally changed the name of the head of the protectorate form from commissioner to governor (title would remain till 1962) It created an executive council constituting of such members as his MG would decide to appoint. The members could be suspended by the governor upon sufficient cause being shown. Upon the suspension of such member, the governor was to inform HMG who was to confirm or reject the suspension, if confirmed the position would become vacant. The ex.co would subsequently become the formal executive organ or the colonial government and its cabinet with officers. It established a legislative council; the leg co was made up of the governor and not more than two more persons' and who served at the pleasure of her majesty. The leg co was for the very first time a separate organ of government, although its inclusion of members of the ex.co in its composition militated against the principle of separation of powers.

The powers of the leg co were to;

- make laws
- constitute the court and general oversight of administration, justice and maintenance of peace, order and good government.

The leg co was chaired by the governor who had a veto on all matters legislated on by the council. An overall power to respect or reject the veto only in his MG, any bills passed by the leg co had to be transmitted to the governor to assent.

Where he refused to assent to a bill, it was then passed to his MG as to whether it should be assented to and become law. The judicial system put in place under the 1902 o-i-c remained intact.

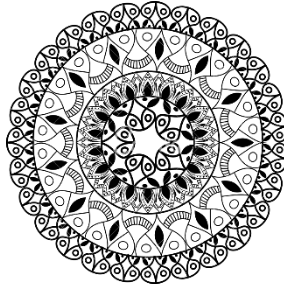
The order in council was signed in Uganda's constitutional history for a number of reasons.

- For the very first time, the basic feature of a topical state is seen to take shape. There is less clear demarcation of the three arms of government, even though the separateness and independence were defeated under the 1902 o-i-c.
- It was however still clear that it was designed to retain and re-enforce colonial power and reign, give closer relations of the powers of government was still considerate such that there had been not that much of transition in the distribution of power, it confirmed the executive authority of government while introducing a few cosmetic reforms. A critical look at the membership of the organs created under the o-i-c reveals this.
- The official members of the leg co wren largely drawn from the public service, the executive who were majority with the unofficial members were a minority. With the governor's power of veto these numbers were rendered irrelevant.
- There were other aspects in the o-i-cc which were delimiting first; only the governor could call for meeting and the corum of both bodies- ex.co and leg co was 3 (governor and 2 others)
- The governor had the power to operate independently of both executive and legislative councils. (No checks and balances on top of the fusion of powers) in effect, while the

number of people involved in administration of government powers of the governor remains largely intact.

- The arrangement continued to exclude both Africans and Asians with the exco and legco. Manned exclusively by Europeans.

CHAPTER FOUR



Developments in the Protectorate from 1920-1930s

The Asian question – political representation and economic interests

In 1920 and 1930's demand fro political participation in the protectorate government would be made not by the native Africans, but the other non-European communities, the Asians. The Indians had come to east Africa at the close of the 19th century mainly to construct the Uganda railway, after which most settled in Kenya and Uganda carrying out trade and commerce as their main occupation. By 1920s, the communality was significant in numbers and they therefore argued for political economic stake in the protectorate. The Asian community pressurized the colonial government for representation in the legislative council. This would bear fruit with the domination in 1926 of the first Indian representative ***chinubhai jethabai amin*** to the legco. In effect, the first non-European representative on the legco was Asian rather than African. The Asian question has for long time affected politics and government in Uganda.

Further, discrimination and racist laws and policies led to the dominance of trade and commerce by the Asian community. This was achieved through

laws which excluded the Africans from trading within a certain radius of an urban center- thus the trading ordinance 1938 prohibited natives from trading within 10 miles radius of the urban trading that reduced limitation on native trading to one mile distance from municipal boundary. Similarly, Africans were prohibited from ginning cotton and processing coffee and engaging in export-import trade. Thus, the foundation of the economy of the protectorate was in the hands of Asians. This led to friction and antagonism against the Indian community such that whatever there was an uprising and riots, the Indian community was a prominent target for anti-colonial sentiments.

The Asians did take advantage of the discriminatory laws and policies and consolidated their economic position, and just like the Europeans looked only to their affairs. In analyzing this issue, an oxford Indian scholar, remkrish murkerjhee, problem of Uganda (1956) made this observation of the relations between Africans and the Asians and Europeans.

"in Uganda, the Indian community grew as an off-shoot of a poisonous tree because the tree does not need further sustenance from the off-shoot and the soil has had it from the start. Therefore, when the present economic growth for the Indian sin this country is over, nobody will lament their disappearance. The tragedy will however remain that they were forced from the sea by the connivance of those who so clearly affected the anger of the people on this scapegoat."

The Indian community has featured as prominent factor in Uganda's political and economic life both in its colonial and independent periods. The triangle of European –Indian- African relations often saw the Indians identified as part of the repressive colonial rule. Most of anti-colonial sentiments would be expressed against them, and on one can say that the 1972 expulsion represented the culmination of the African dissatisfaction with the Indian community.

The bataka/ peasantry grievances over land provisions under the 1900 agreement

The protectorate underwent significant developments between 1900 and 1920 particularly in Buganda. During this period n Buganda, the power of the mailo land beneficiaries was on the increase and this was set against dissatisfaction of those who were disposed by the land redistribution under the Buganda agreement. When the kabaka Chwa II took over from the regents, the bataka who had formed a quasi- political association in 1921, appealed to the bataka ask the governor for a review of the agreement. They were joined in its appeal the peasants who were aggrieved by the rent (busulu and envujo laws) payable to the mailo land owners. While kabaka Chwa I was sympathetic, the lukiiko rejected the demands. Nonetheless, by this time, the colonial government to become concerned about;

- colonial government between landlord and tenants in Buganda;
- the bataka grievances which if unaddressed threatened to become even more problematic to administration of the protectorate;
- the overall system of land tenure in Uganda in Uganda was nit delivering efficiently in economic terms.

Colonial government set up a commission of inquiry in 1925 and this resulted in the passage of the Busulu and Envujjo laws 1928 to regulate the rent that was to be paid by the peasant's land in Buganda. The law was promulgated basically because there was no limitation on amount of rent tribute that the landlord could extract from tenants and the amount was arbitrary determined by the landlord. As a result, the landlord could extract as much as possible from tenants, peasants felt oppressed by the system and the colonial government concluded that this state of affairs was unproductive. The Busulu- Envujjo law;

a) Placed a limit on n the amount of Busulu and Envujjo that a landlord could extract from tenants,

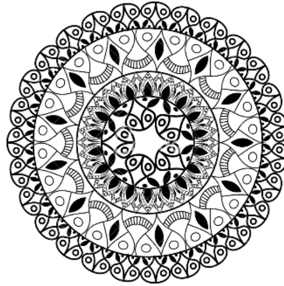
b) B) guaranteed to Buganda peasant's complete and hereditary security of tenure, i.e, they could not simply be failing to pay rent.

c) The Busulu and envujo laws represented a revolution in the relations in Buganda. In social terms, the law created new relations between the landlords and tenant's peasants in reducing the arbitrariness and insecurity in those relations. It also reduced the material basis and power of landlords. Economically, the tenants gained security of use of land and this ensured that cash crop production continued in effect, the system of capital production benefited from these new legal relations (guaranteed of raw materials). For the bataka who had raised the complaint there was no gain/ benefit. The case of the kabaka was more complex. On the one hand, he was seen as a sympathetic listener to the plight of his people, on the other hand however, was not actually able to deliver any reform or solution to their problems/ grievances. Its prestige and position were generally undermined that he was to lament thus.

"My present position is so precautions that I'm no longer the direct ruler of my people. Oil beginning to be considered by my own subjects merely as one of the British governments paid servants. This is sorely due to the fact that I'm posses no real power per my people. Even the smallest chieftainship is under the control of the provincial commissioner. Evan order given whether by local chiefs or the lukiiko serfs is always looked upon with contempt unless and until it is confirmed by the provincial commissioner..."

The Busulu and Envujjo law was able for a time being social and political confusion in the kingdom. However, it failed to address the grievances of the bataka who would eventually organize the most significant anti-colonial movement. The failure to address their grievances was to lead to increased antagonism and protests.

CHAPTER FIVE



Un Masking of Colonial Rule, 1945-1960

The kabaka crisis of 1953-1955 and its impact on national politics in the protectorate. Sir Andrew coven arrived as governor in January 1952. As a governor he sought:

- Education and training of Africans administrators
- to increment the African participation in central government and
- placing of local government on a stable, democratic and viable foundation.
- Significantly, one of Cohen's first concerns was in regard to Buganda. In march 1953, sir coven issued a point memorandum with the kabaka on constitutional development and reform providing for;
- sixty of eighty-nine lukiiko members were to be elected;
- the kabaka to consult a lukiiko committee before selection of his ministers;
- increase of responsibility of the Buganda agrgovernment local services such as those involving primarily and junior secondary schools, rural hospitals, dispensaries, field services

for soil conservation livestock breeding and disease control were to be transferred to the Buganda government.

The devolution of services, rather than being contrary to the promotions of protectorate unity, was regarded as essential to it. In fact, the reforms of March 1953 were an attempt to forestall as deferral system rather than an initial step towards it. In fact, the 1953 memorandum stated expressly that:

'The Uganda protectorate has been and will continue to be developed as a unitary state'[98]

Later in 1953, sir Andrew coven introduced changes in composition of the leg co to increase the total number of representatives was increased from sixteen to 28 with the 14 of them Africans.

Notably, the 1953 reforms would underline the dependence of colonial government on the loyal co-operation of the kabaka. With the ascendancy of Muteesa II as kabaka, was bound toucan's friction. Educated at Cambridge and already offended that he was not treated with honor at the coronation of Queen Elizabeth II in 1952, the reliance on Muteesa to promote colonial government policy was unlikely to be a happy circumstance. None the less, he was teen to support the March 1953 reforms. But where the coven policy threatened the tribal loyalties, this would have rendered tribal institutions, including the kabakaship to decline in importance. The factor and concern would spark of the crisis in Buganda that came to be known as the kabaka crisis (1953-1955)

The kabaka crisis of 1953 was sparked off by a speech made on the 30th June 1953 by the secretary of state for the colonies in which he referred to possibility 'as time goes on of still larger measures of unification and possible

[98] Memorandum on constitutional development and reform in Buganda, Entebbe.

still larger measure of federation of the whole east African territories[99]. This pronouncement caused adverse public reaction without Buganda. In a seriously worded letter, kabaka muteesaII argued that the affairs of Buganda be 6trasnferred from the colonial office to the foreign office and a time table be prepared for the independence of bugmnada.

The kabaka and his ministers could no longer feel happy about Buganda's position under the agreement; apart from the danger of federation, they considered the policy of developmening a unified system of government along parliamentary lines must inevitably result bin Buganda becoming less and less important in the future. The Kabaka's demands were far more than a challenge to any proposed federation, as it means a complete break with governor sir Andrew Cohen's vision of a unitary Uganda state. The kabaka had re affirmed in his letter Buganda's separatist tendencies and assertion of a claim to a special status that had apparently been under. After 3- 4 years, our dependants were changed into provinces to rank as equal as Buganda province. As regards administration, was of equal rank but otherwise the Buganda kingdom is independent[100].

27th October 1953, the lukiiko passed a resolution requesting that the kabaka refuse to name any Buganda to the legislative council. This not only endangered the success of the newly reformed legislative council but also render a unitary Uganda extremely likely. After a series of unsuccessful negotiations, Sir Cohen placed before the kabaka certain undertaking to which he was required to agree.

- That the kabaka would positively co-operate in the future progress of Buganda as an integral part of the Uganda protectorate (march 1953 memorandum)

[99] Withdraw of recognition from kabaka Muteesa II of Buganda, cmnd 9028 London, 1953, p.7

[100] Mukabwa & ors. Vs. Mukubira & ors. Civil case no. 50 of 1954-1956 URL 74

- that the kabaka submit the names of Buganda members to the legislative council; and
- That the kabaka co-operate loyally with her majesty's government in the organization and administration of Buganda in accordance with the 1900 agreement.

When kabaka Muteesa II refused to heed to those undertakings, governor Cohen withdrew recognition from him under article 6 of the Buganda agreement, declared a state of emergency and swiftly deported him in the Uk (under emergency deportation and exclusion). Following the deportation, with the lukiiko refusing to select a successor kabaka, the affairs of the kingdom were placed under regents. In a subsequent court case of Mukabwa vs. Mukubira [1954], the exercise of those emergency powers was challenged. In the end, the case was a disguised challenge of the validity of the withdrawal of recognition and deportation of the kabaka. In the case, three of the Kabaka's nominees to the lukiiko members to take their place in the lukiiko as they had not been nominated by the kabaka. The case was essentially dismissed on the ground of non-justifiability. It was a nonetheless, a defense that according to low Pratt, gave the impression that the government did not in fact respect the agreement or feel itself bound by its terms.

Reaction to the deportation of Muteesa II was nearly unanimous with the agenda angered by the deportation. Even the UNC which was hostile to traditional rules joined the agitating for the Kabaka's return. Sir Andrew Cohen set up a committee (Hancock committee) to consider;

Constitutional reorganization in Buganda

Continued participation of Buganda in the protectorate and representation of Buganda in the leg co. At the end of the namirembe negotiations, it was agreed that;

There was a need to replace tribal autocracy with structure of modern representative government.

- The ministers were to be responsible to lukiiko not to the kabaka.
- The appointments and dismissal of chiefs to be surrendered to Buganda government.

However, it would not be until May 1955 that Muteesa II was allowed to return, with a new Buganda agreement of 1955 in place. By the time the kabaka was deported and deposed, his popularity had suffered mainly as a result of the 1940s uprisings in which chiefs and ministers had been targets. The Kabaka's stand was thus not only a challenge or British policy, but an effort to consolidate loyalties of this own people. Paradoxically, buy taking a stand against the colonial government Muteesa II was perceived within and outside Uganda as nationalist. The heroism was further enhanced by virtue of the fact that in settling the kabaka crisis and drawing up of a new agreement, the Buganda agreement of 1955, in which the colonial government made a major concession to the kabaka on the issue which had been the cause of his deportation. Thus, in the preamble of the agreement, it was provided;

"Her majesty's government has no intention whatsoever of raising the issue of east African federation either at the present time while the local public opinion on this issue remains as it is at the present day of signing and recognizes accordingly that the intrusion of Buganda protectorate in any such confederation is outside the realm of practice [politics st the present time or while public opinion remains as it is"

Her majesty's government also undertook to consuls with the government of Buganda on the issue of federation. in this way, the 1955 agreement put to rest the question of federation, thus upholding the Kabaka's original objection. The main feature of the 1955 agreement was;

c) It was the constitution for Buganda. The Buganda government was transformed in structure, if not in spirit, into a constitution monarchy. The framework was thus established within which the

objective of a united, if not unitary Uganda government along parliamentary lines was to be pursued.

d) B) it provided for the participation of Buganda in the legislative council, with Buganda's representatives elected on a formal of indirect elections with the lukiiko acting as an electoral college. The composition was not to be altered for 6 years[101]

THE 1955 NAMIREMBE AGREEMENT

Between 1953 and 1955 there was major unrest and discontent in Uganda, part of the British-administered Uganda Protectorate, following a speech in which the British Secretary of State for the Colonies made a "passing reference" to the possibility of East African federation. The incident prompted widespread calls for Baganda independence as the only protection against British overreach. In order to force a resolution to the deepening

[101] See especially article 7 and the 2nd schedule (which provides for regulations on elections anciliary to of the agreement Katikiiro of Buganda vs. AG of Uganda [1959] EA 182.

political crisis, the Governor of Uganda, Sir Andrew Cohen, invoked the Uganda Agreement (1900) and demanded that the Kabaka (Mutesa II) fall into line British government policy which favored the continuation of a single, unitary, Ugandan state. The Kabaka refused. As a result, the British Government withdrew its recognition of Mutesa II as Uganda's native ruler under Article 6 of the 1900 Uganda agreement and forcibly deported Mutesa to Britain. News about Mutasa's deportation severely shocked the Baganda, leading to a constitutional crisis. Cohen's preference was for a new Kabaka to be installed immediately, but this proved impossible, necessitating a fuller negotiated outcome.

The Buganda Agreement, 1955 was made on 18 October 1955 between Andrew Cohen, the governor of the Uganda Protectorate, and Mutesa II, Kabaka of Buganda

under **Article 2** of the Buganda Agreement of 1955, and the term "the Government of Kabaka" means the Government established for Buganda by this Constitution. After the adoption of the new agreement, Mutesa duly returned to Buganda and the main agreement was duly signed on 18 October. The signatures of the Kabaka, the Governor and other witnesses appear at the end of the treaty. Strictly speaking, Mutasa's return to Uganda was not within the mandate of the conference. However, the Kampala Supreme Court`s finding that the British government relied on Article 6 was "wrong" – shortly after news of the Namirembe agreement, but before the agreed recommendations could be published – pressured Cohen to back down. In November, he reversed the British government`s position and accepted the return of Mutesa, subject to the adoption and implementation of Namirembe`s recommendations. In order for the new rules to be well established before the decision, Grand Lukiko`s decision to return as an Indian from Kabaka Mutesa II or to elect a new Kabaka would have to be made nine months after the new rules came into force. However, Her Majesty`s Government will be happy to shorten the time limit if, before its end, it is satisfied that the constitutional rules are well established and

functioning satisfactorily. Her Majesty`s Government will do everything in its power to bring it into force on 31 March next year.

IT was the bitter pill for Muteesa to swallow the solemn commitment. "I promise to be faithful to Her Majesty Queen Elizabeth II, who enjoys the protection of Buganda, to govern her heirs and successors and Buganda well and honestly in accordance with the law, and to abide by the terms of the agreements with Her Majesty and the Buganda Constitution," he said, in accordance with the Bible at the affirmation ceremony. The 1955 agreement of 18 October 1955, one day after Muteesa`s return from exile, and. A body shall be established to be called Buganda Appointments Board. On 1 March, it was announced that Sir Keith Hancock, Director of the Institute of Commonwealth Studies at the University of London, at the invitation of the Right Honourable Oliver Lyttelton, now Lord Chandos, and Governor of Uganda, has agreed to visit the Protectorate to consult with representatives of Baganda and the Protectorate Government on various constitutional issues relating to Buganda. For three months, from June 24 to June 17. In September, Sir Keith Hancock chaired the talks, first with the Constitutional Commission appointed by Buganda Lukiko, then with the Committee and the Governor. Subject to the provisions of this section, the Lukiko shall be formed in accordance with section 5 of the Buganda Agreement of 1955 in the manner provided for in the Grand Lukiko (Election of Representatives) Act of 1953. SIGNED on this eighteenth day of October 1955. For and on behalf of Her Majesty Queen Elizabeth, II A.B. COHEN Governor The conference was held in Namirembe, near Kampala, and resulted in a comprehensive agreement.

The conference recommended, inter alia, that the Kingdom of Buganda under the Kabaka government continue to be an integral part of the protectorate; whereas the management of public affairs in Buganda should be in the hands of ministers; and that the kabakas, while all the traditional qualities of the kabaka should be fully protected, in the future should be constitutional leaders committed by a solemn commitment to respect the

terms of the constitutional agreements and not to endanger the security and well-being of the people of Buganda and the Protectorate. If there are differences of opinion between the Protectorate Government and the Kabaka Government, and such disagreement cannot be resolved by a discussion between the representative of the two Governments, and the Governor is satisfied that the matter undermines the interests of peace, order or good government of the Protectorate of Uganda, the Governor may formally advise ministers on this matter. The constitutional powers of the Kabaka are exercised, as far as possible, through the promulgation of written documents signed by the Kabaka and countersigned by a Minister. To sign the final adoption, the laws adopted by the Grand Lukiko are signed by the Kabaka. After further negotiations in London, Namirembe`s recommendations (with minor amendments) were adopted in July 1955 in the form of a new Buganda Agreement, which would "supplement and, if necessary, amend the 1900 Agreement" rather than replace it. The main delay was caused by a conflict between Mutasa's desire to sign the final agreement in Buganda and the British view that his agreement was a precondition for his return.

The solution found was "a transitional agreement that will run until the main agreement in Buganda is signed by the Kabaka upon its return. This transitional agreement will respect the same conditions as the main agreement, with the exception of the transitional provisions, and will be signed by the personal representatives of the Kabaka after approval by the Lukiko. Six weeks after the appointment of Buganda ministers and Buganda representatives to the Legislative Council under the new arrangements, the British government] would allow the Kabaka to return to Buganda, where it will sign the main agreement. The Transitional Agreement was translated into Luganda and adopted on August 15, 1955.

"Buganda Agreements" means the Buganda Accords from 1894 to l955 and any other agreements hereinafter concluded on behalf of His Majesty with the Kabaka, the Chiefs and People of Buganda or the Government of Kabaka, but do not contain the laws or rules of procedure of Buganda made in accordance with this Constitution; The Buganda Agreement of 1955 was

concluded between Andrew Cohen, Governor of the Protectorate of Uganda, and Mutesa II, Kabaka of Buganda. The tasks entrusted to the Government of Kabaka are formally defined in a document that will enter into force at the same time as the Agreement Amending or Supplementing the Uganda Agreement of 1900, which will be negotiated after the adoption of the recommendations of this Conference by His Majesty`s Government and the Great Lukiko. Initially, these functions were those currently performed by the Kabaka government, as well as those listed in paragraph 2 of the Memorandum on the Development and Reform of the Constitution in Buganda, issued in March 1953. Local government in the Sazas is the responsibility of the Buganda government with the advice and support of the protectorate government; the situation in municipalities and shopping centres shall be examined in accordance with Article 47. In community development, the Government of Buganda and its officials work in collaboration with the Protectorate`s Community Development Department. The list of functions may be amended at a later date by agreement between the Government of the Protectorate and the Government of Buganda. (3) If a function under this Constitution may be exercised by the Kabaka, that function shall be exercised by him, unless apparently intended otherwise, by means of a written document signed by him in the presence of a minister, who shall sign him as a witness. On that day, the Kingdom of Nkore was incorporated into the British protectorate of Uganda by the signing of the school agreement. Each minister is politically responsible for the management of affairs in his own main department, and the ministers are jointly responsible as a ministry within the framework of the tasks assigned to the Kabaka government. 5. For the purposes of this Article, the term “African” means the meaning conferred on it by the interpretative regulations and general clause of the protectorate of Uganda, as amended, or by a regulation replacing these regulations.

The Paradox: Uganda Versus Buganda

The paradox was that although Muteesa II was projected as a nationalist for standing up to the colonial government; in fact, he was only protecting Buganda's sub-nationalist federalist interests. From 1955 onwar5ds, the kabaka and his government embarked on a course to ensure protection of the interests of Buganda. The separatist's tendencies of Uganda became heightened notwithstanding the formal constitutional arrangement the 1955 agreement. In 1958 and 1961 legislative council election – boycott and demand for indirect method of election.

Demand for independent Buganda as a state and the federal status and indirect elections to national assembly at the Lancaster conference, 1961. The birth of political parties in Uganda and colonial reforms from 1952 to 1958.

It was at the height of the human face reforms that Uganda's first recognized genuinely nationalistic parties; the Uganda national congress (UNC) was set up on the 2nd March Gby Ignatiuts Musaazi.

Ignatius Kangave Musaazi was its first President of UPC, and Abubaker Kakyama Mayanja the party's first Secretary General. Apollo K. Kironde was the legal advisor to the party. The six men who founded the party were: Ignatius Kangave Musaazi (Buganda), Abubakar Kakyama Mayanja (Buganda), Stefano Abwangoto (Bugisu), Ben Okwerede (Teso), Yekosofati Engur (Lango) and S.B. Katembo (Toro)[102]. A freedom charter and manifesto were published. The UNC claimed its main priorities the realization of national unity, peace \, freedom and equality. Its driving forces were the desire to transfer power and authority from the colonialists to indigenous black Africans. The second political party to be established was the democratic party (DP) set up in 1956. The DP was also established as a

[102]Kavuma-Kaggwa, J. M., "The UNC was the pioneer of Uganda's independence", Daily Monitor Newspaper (Uganda), 12 Oct 2021

national party with the main aim and objective of addressing what was perceived to be historical discrimination suffered by people's catholic faith under colonial rule and mengo administration. This had led to a feeling of marginalization among the catholic elite. The DP and UNC did nonetheless share a common vision that Buganda's sub-nationalism was incompatible with the notion of a united independent Uganda. This particularly put the DP at logger-heads with the interests of Buganda. The manner in which the 2 parties approached this issue was to shape the history of the immediate independence era.

The catch word of colonial reforms of the period 1952-1961 had become Africanisation, i.e. the transfer of power into African hands which process was to cover political and socio-economic spheres. Thus, the colonial government embarked on the process of recruitment and training and promotion of Africans to higher positions in the civil service. A sum of BPS 200,000 from the east African development fund was allocated for scholarship to Ugandans to take up studies overseas. By the 1953 plans were in place for establishment of a unified civil service and principles of equal pay. Further BPS 10 million, came from the EADF for purposes f education with 1/5 of this sum allotted to technical education and further BPS 1 million set aside for community development with a similar amount for expansion of medical services, while bps 2 million was directed at agriculture. In the political arena, the colonial government expanded the representation of Africans in the legislative council. By 1954, the composition of the legislative council was as follows;

- Governor
- 27 representatives
- 9 Officials
- 11 Cross- benchers
- 9 Ex-officio

The new category of cross benchers was made up the government nominees allowed to freely debate and express views on any matter but when it came to voting had to vote with the government, ensuring that on all matters in the house, government was always able to maintain a majority (2 members) in other words, despite the expanded representation, the colonial powers in the state remained intact.

The second major reform ninth political arena was the introduction of ministerial position for the Africans for the first time with 3 Ugandans becoming ministers, mungonya, D. nabeta and A kironde. Thus, for the first time in the colonial period, Ugandans would participate in government, administration and policy. The governor felt out the functions that the new representative's members from districts and kingdoms would perform as:

They were to represent the African rural and act as the voice of the Africans in articulating their views/ grievances.

They were to act as a check in the government and scrutinize [polices of the state they were to provide leadership for the African community in the protectorate- they were tour the constituencies and spread understanding of the changes under way in the protectorate and prepare the people for transition to a new nationalistic system of governance.

It can be said that at this point in time, the colonial government had finally come around to accepting that change was inevitable and the colonial system would not last forever. In spite of all these changes, so many problems remained, amongst of which was;

a) Full participating of Africans remained largely minimal. The ministerial allotment was nominal (and confined to very insignificant portfolios).

b) Draconian laws remained (e.g., deportation ordinances) and practices such as detention without trial, bandings, restrictions on freedom of

expression and deportation continued well to the eye of independence (of Muteesa II 1953). Re binaisa 1959.

c) Discriminatory deferential treatments in hospitals, residence and schools continue right up to and even after independence.

d) Encouragement of functionalism and ethnification of political activities by the colonial government, by fostering religious and ethnic concerns.

e) African recruitment into the civil service was extremely slow with high positions still dominated by European and Asians throughout the years up to independence.

f) Encouragement by the colonial government of in fact turned a blind eye to; the separatists tendencies growing in Buganda (in after math of the kabaka crisis of 1953- 1955) leading to an even more functional politics up to independence.

Therefore, the legacy of this period was a pragmatic one. On the one hand, it set the stage for African representation while on the other; it undermined and neglected the gains to be made by truly nationalistic struggle. The questions thus posed of the prime colonial actor of this period- sir Andrew cohen

(i) Was the agreed reformer of ultimately a disaster for Uganda?

(ii) What was the impact of his tenure in constitutional and political history of Uganda?

Following the birth of the UNC, other political parties were formed. In 1956, DP (Democratic Party) " known for Catholics was formed by Bendicto Kiwanuka".In March 1960, UPC - Uganda People's Congress party "known for protestant "was formed by Milton Obote. After the 1958 general election in Uganda, seven unaffiliated members of the Uganda Legislative Council (which was in effect Parliament in those colonial days), formed the

Uganda People's Union. In 1960 there was a split in the UNC party: there was a Musaazi faction and an Apollo Milton Obote-led faction. The Uganda People's Union together with the Obote-led faction of the UNC, got together and formed a new party, the Uganda People's Congress (UPC) in March 1960. The DP and UPC parties became major political parties in Uganda. The UNC became less of a force, mainly because DP became popular and a new party emerged: Kabaka Yekka party (KY)[103]

The Kabaka Yekka ('The King Alone') Movement, 1961–196

In May 1961 a small group of men formed the Kabaka Yekka movement in the Kingdom of Buganda. Their simple objective was to unite the Baganda behind the throne, the symbol and guarantee of Buganda's separate identity. The great fear was that the election of a national Democratic Party government in the previous March had marked a decisive stage in the destruction of Buganda's special position within Uganda. Kabaka Yekka's appeal to Ganda loyalty was instantly successful, but it was not until the Kabaka's ministers agreed to accept membership of independent Uganda, and to support Kabaka Yekka in Buganda, that Kabaka Yekka could win popular support and deal effectively with the Democratic Party. But when Kabaka Yekka became an 'official' movement, its whole nature and function was changed. There had been differences at the beginning, but now the simple objective barely disguised the contradictions within the movement, while Kabaka Yekka became a means to personal promotion as well as the guardian of the 'national' interest. Above all, Kabaka Yekka now included the chiefs, who wanted to preserve the existing political and social arrangements within Buganda. The DP won a majority of the seats in the National Assembly in Uganda's first free national elections in 1961, and formed a government. The UPC and traditionalist Baganda both disliked the Catholic

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[103] Kavuma-Kaggwa, J.M. (9 Oct 2019). "Road to Uganda's Independence: A view from a witness". PML Daily.

orientation of the DP, but were diametrically opposed to each other's ideals.[104] Despite this, the UPC sounded out a political alliance with the Baganda leaders and the Kabaka (King) of Buganda, Mutesa II. After several negotiations, the UPC and Baganda leaders held a conference whereupon an agreement was reached. Soon afterwards the Baganda created the Kabaka Yekka and entered an alliance with the UPC.[105] Historian Ian Hancock attributes the formation of the KY to Sepiriya Kisawuzi Masembe-Kabali, with support from John Bakka, Latimer Mpagi and Antoni Tamale.

So, by February 1962 Kabaka Yekka had become the party for the Baganda and for the *status quo* within Buganda. It was a party which, because it was identified with the Kabakaship, was able to destroy the Democratic Party in elections for the Buganda Lukiko, and a party which, although in alliance with Dr Obote's Uganda People's Congress in national politics, had aroused sentiments and interests pointing ultimately, if not irrevocably, to Ganda separation.[106]

In 1962 Kabaka Yekka allied with Uganda People's Congress and the reason is Bendicto Kiwanuka a leader of Democratic party (DP) , muganda had an alliance with Kabaka Yekka and by that time KY was silent and wasn't registered ,Kabaka Muteesa told all the Baganda to boycott the elections of 1958 but Bendicto Kiwanuka refused and was declared anti Buganda hence Kabaka allying with UPC under Obote . In the Lukiko elections of 22 February 1962, it won 65 of the 68 seats, with a vote share of more than 90%.[107]The Lukiko duly elected 21 KY members to the National Assembly. [The UPC won a majority in the April 1962 general elections for the National Assembly, so Obote was tasked with forming a government. He became Prime Minister of a UPC-KY coalition government, with the KY holding

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[104] Karugire 1980, pp. 179–181.
[105] Karugire 1980, pp. 182, 186.

[106] The Journal of African History , Volume 11 , Issue 3 , July 1970 , pp. 419 - 434
[107]Hancock 1970b, pp. 431–432.

mostly insignificant portfolios.[108] Obote subsequently undermined the alliance with the KY by establishing UPC offices in Baganda in contravention of the inter-party agreement, and by encouraging KY members of the assembly to defect to his party through offers of patronage.

In 1964 a conservative in the UPC, Grace Ibingira initiated a struggle to gain control of the party with the ultimate goal of deposing Obote. Meanwhile, Mutesa increasingly feared that the UPC would deny his kingdom its traditional autonomy and concluded that in order to retain power he would have to garner influence in national politics. He proceeded to instruct Baganda MPs to join the UPC with the goal of bolstering Ibingira's position and unseating Obote, thus allowing for a reorientation of the UPC-KY alliance that would be more favourable to Buganda. On 24 August Obote, with the UPC having consolidated a majority in Parliament, declared that the coalition with KY was dissolved.[109]

In 1980 Mayanja Nkangi founded the Conservative Party, which is considered to be a *de facto* successor of Kabaka Yekka. Abu Mayanja, "a leading spokesman for the KY-dominated government of Buganda, described how "we in Kabaka Yekka hold than only a government based on the institution of Kabakaship can be stable in Buganda... [we believe] that the first duty of government is to maintain and uphold the institution of monarchy as the foundation of order, security, unity and patriotism in Buganda"[110].

In conclusion therefore the Kabaka Yekka party per its alliance with UPC made it to be on board and with the elections of 1962 presidential sit.

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[108] "Brief Political History of Uganda". *ottawa.mofa.go.ug. Retrieved 1 June 2021.*

[109] *Provizer, Norman W. (1977).* "The National Electoral Process and State Building: Proposals for New Methods of Election in Uganda". *Comparative Politics. **9** (3): 305–3126.* doi:10.2307/421321. JSTOR 421321

[110] Earle 2017, p. 174

According to the 1962 constitution only traditional monarchs where the only allowed to contest for presidentship of Uganda thus Muteesa II under KY and Nadiope the King of Busoga. Mutesa won Nadiope and became the President.

The alliance with UPC made Milton Obote to be appointed as a prime minister of Uganda which in turn caused tension and suspicion from numerous facts for example the Lost counties"1964 referendum", difference in ideology when Milton Obote wanted Unitarisim government while Muteesa the President wanted Federalism government, illegal mining of gold from Congo Zaire etc. Hence sparked off the 1966 crisis with the first stone when Iddi Amin went to bomb Bulange Mengo with the orders of Milton Obote. kabaka Muteesa I escaped in clothes of Priest in the bathroom hence going to exile where he died from thus caused the 1966 crisis.

The 1966 Kabaka crisis was the last stone to the grave of Kabaka Yekka party, till to date Kabaka Yekka party refused to resurrect and even can't be allowed to resurrect because they will bring up ideologies of federalism which the central government can't allow. But however, the Kabaka of Buganda on his 66th Birthday Ceremony advised the Baganda to go for numerous posts in order to protect its affiliations which is just a say.

Movement towards independence representation and commissions.

With the reforms introduced by sir Andrew Cohen and the emergence of political parties, the period from 1955 to 1962 was basically characterized by 2 features;

a) Massive polarization of political parties and organizations. Political parties were formed almost every day often collapsed as soon as they appeared. There was a great interest in their formation, but only to remain strong and steadfast.

- Dp led by bendicto kiwanuka,
- Upc (a merger of upc of john magezi and an Obote splinter faction of UNC).

b) Increasing entrenchment of the interests of Buganda which were interested in the preservation of the status quo- and embarked on a policy of no compromise with the colonial government. Interests of Buganda had been given attention to the 1955 agreement.

By the time of expiration of Sir Cohen's governorship in 1957, there were a number of outstanding problems. The expansion of infrastructure had paradoxically resulted in an increase in expansion of staff. But 1957 is sufficient for another event for African constitution, with Ghana becoming the first African colony to achieve independence and this spread a worldwide momentum for the decolonization of the continent.

Against this background, Sir Fredrick Graford as the new governor was faces with demands for constitutional reform.

- Election to the leg co should be direct
- District demanded equal treatment with Buganda in disrespect, the new governor organized for elections at the end of 1957 with the franchise based on eligible votes to be;
- 21 years
- Able to read and write in their own language and
- Owners of freehold or of mailo land- if not land owners, have occupied the land for at least 4 years before registration of regularly paying taxes of at least 4 years and earning income of at least PS 100 a year or own property (movable or immovable) of at least PS 400.

1958 leg.co would for the first time in the Uganda's constitutional history be made of African representatives who were directly elected, even few references were for property and land persons. The only parts of the protectorate in which elections were:

Karamoja,

Ankole (representative's chsen by district council)

Bugisu (representatives nominated by the governor).

Buganda refused to send any representatives to the legco (direct 1955 BA). The 8th legco was made up of five members from upc, 1 from dp and 7 independent)

Constitutional development of the perid following the 1958 elections was characterized by reports of 2 commissions.

1959 report of the Uganda constitutional committee by JB wild as its chairman referred to as the wild report.

1961 report on Uganda relationships by earl of minister (referred to as the minister report)

Together, the commissions and their reports were fundamental for Uganda's constitutional development at this point in time.

a) The report of the wild committee, 1959- The term of reference for the wild committee were:

a) To advise the protectorate government and recommend on the form of direct elections on a common roll for representative members in the leg co in other words, because previos elections had been segregated along racial line, the fear was that this would continue amd further that euro and Asians would be given weighted votes. The other concern was that conferring rights to vote on euro and Asians would lead to their demand for citizen rights which the nationalists were opposed to.

b) To advise on the total number of seats to be filled by the electorate

c) To determine the mode of allocation between the different areas of the protectorate.

d) To consider and advise on the question of representation by the non-Africans.

e) To advise on the size and composition of the government. The committee was boycotted by Buganda who refused to avail its views. The recommendations made by the world committee were:

- The next elections to be held in Uganda in all parts of the protectorate and should take place not later than 1961.
- There should be a common electoral role which did not confer rights of citizenship (to euro and Asians).
- The numbers of elected members should be increased and the representation should be as follows;

a) Urban areas (4)

b) Northern Uganda (15)

c) Western Uganda (17)

d) Eastern Uganda (20) and

e) Buganda (20) making a total of 76 members.

The world committee also made certain recommendations outside its mandate, amongst which were;

i) Part from the elected members of the leg co there should also be specially elected members chosen by the leg co as an electoral college (to elect members representing different interests)

ii) The party with a clear electoral majority in the elections should form the government (and the losing party would be the official opposition)

iii) The ex.co should become a council of ministers with collective response to the national assembly and that members of the council of ministers should be selected from the elected members with the exception of 3 positions

- Chief secretary
- AG and
- Minster for finance who were to be nominated by the governor. The governor should have the veto powers if necessary.

Further, in light of the many views, that had been expressed on the form of government that Uganda should adopt, and on the question of the relation between the various people of the protectorate, the committee recommended that before the 1961 elections, a conference should be called to examine the issues and make comprehensive recommendations (on these matters).

HARDENING OF BUGANDA AS TO ITS STATUS AND INTERESTS FROM 1958 ONWARDS.

While the world committee was making its consultations, Buganda kept on hardening as its perceived status in the protectorate. With the 1958 boycott, the hardliner elements comprising the kabaka, chiefs and landlords began to map ways of ensuring that Buganda's autonomy was secured. The boycott of elections had its self been signed to put pressure on the colonial government to give into the demands of the kingdom. A movement began to grow in Buganda with its primary goal to secure the protection of Buganda's interests against the designs of the nationalists. The culmination of the movement's

function was the submission I November 1960 of a memorandum to her majesty, the queen of England stating as follows;

c) British protection over Buganda by the 1900greemnet should be terminated and

d) As a consequence of the termination of the status, plans should be immediately made for an independent Buganda. Amongst other things the plan would include;

viii) Establishment of friendly relations between Buganda and HMG and the exchange of ambassadors and high commissioners.

ix) Buganda would remain in the common wealth and seek membership of the UN;

x) All powers previously exercised by the governor to be vested in the kabaka and his government;

xi) Buganda would have its own armed forces with the kabaka as commander in chief.

xii) All institutions of learning in Buganda with the exception of Makerere College would fall under Buganda jurisdiction.

xiii) Makerere College would fall under the jurisdiction of Buganda.

xiv) Arrangements for the independence of Buganda should be complete by December 1960. On 1st January 1961 the lukiiko declared the independence of Buganda. Although the declaration was never a reality, the message was very clear.

This was sharply brought home with the preparations for the 1961b elections. Although the colonial government went ahead with the elections, the Kabaka's government directed its follower not to register for the elections. Indeed, by the time registration was closed, only a handful of mainly dp supporters had actually registered. In effect, Buganda had organized another

boycott which was successful. In political terms, the boycott marked the death of dp in Buganda because dp had defied the boycott. Ben kiwanuka was portrayed as anti- Buganda luganda and as a man who did not respect the kabaka. It was not helped that Ben kiwanuka was also of catholic faith.

On the other hand, UPC gained from the boycott because they had not decided not to fill in candidates in Buganda. The Buganda government therefore felt that there was a possibility of good relations with upc's Apollo Milton Obote, and marked the onset of the upc – Buganda alliance later cemented during the Lancaster conference.

Report of the minister commission, 1961

Set up in the 1960 by the secretary of state for colonies, the report of Uganda relationship commission was given by the earl of minister. Its basic terms of reference were to consider the official form of government most appropriate for Uganda and the relations between the central government and other authorities in Uganda particularly kingdoms. The commission was supposed to be guided by the following;

i) HM government's decision to grant Uganda independence through appropriate stages.

ii) Development of stable institutions of government for Uganda.

iii) Incorporation of specific circumstances and needs of people of Uganda as they become independent.

iv) Consideration of the desire of people of Uganda to preserve existing institutions and customs as well as to uphold the status and dignity of their kings and rules.

The commission as supposed to bear in mind the special relations between HM government and the kingdoms with whom agreement had made in the

early 1900sw. the commission had to make sure that all these aspects were accommodated. Thus the 1961 minister commissioner report and together with the 1959 wild committee report would provide the framework for the 2 constitutional conferences, of which the first was held in September 1961 at Lancaster and the second inn June 1962 at Marlborough.

The minister commissioned made several recommendations:

i) As regards trends for succession, it was unacceptable to allow Buganda to separate from the rest of the protectorate. The protectorate that had been in existence since 1894 must continue till Buganda has reconciled itself with the rest of Uganda.

ii) The relations of Buganda and Uganda should be a federal one

iii) Buganda should be given a guarantee that any laws made to the central government which would affect the kabakaship and Buganda's other exclusive interests would be of no effect unless agreed to by the lukiiko. Such a guarantee would be by law enforceable by courts and Buganda should have the deciding voice in determining the form of guarantee.

iv) The kabaka should withdraw from politics and become a genuine constitutional monarch to perform just ceremonial non-executive functions.

v) The lukiiko of Buganda should be dejectedly elected. It would be as, Electoral College for the 20 seats of Buganda's representatives to the national assembly (indirect elections) this would be very controversial during the constitutional conferences.

vi) Voting in the future would be by universal adult suffrage.

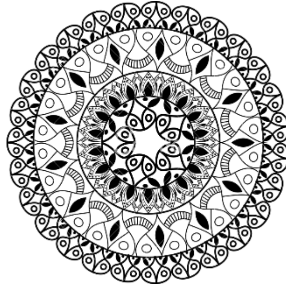
With regard to the character of government, the commission stated that Uganda should be a single democratic state with a strong central government. Within this state, Buganda should stand in federal relations while the other 3

kingdoms would be in semi-federal relations. With respect to the head of state, until Uganda attained independence it would be the government representing H,M the queen, therefore it was appropriate to appoint a governor-general to allow time for debate on the head of state. Further, the head of state would exercise prerogative owners of the crown-summoned and dissolve parliament, made treaties etc.

The legislature was to become the national assembly. Any amendments to the constitution up independence were to be passed by 2/3 majority of the national assembly. The courts of law would have the power to declare the constitutional legislation invalid.

In conclusion, the wild and minister report laid out the broad parameters for the debate on the constitution for the independent Uganda. In fact, in certain respects, the 2 reports foreclosed debate, while in others they opened up issues to incorporate new dimensions. Indeed, it can be said particularly of the minister report that it provides a draft constitutional report for Uganda. At the opening of the Lancaster conference in September 1961, the secretary of state for colonies expressed the view that as far as relations with Buganda were concerned, the minister proposals were so far the best of not the only way of securing the co-operation of the people of Buganda in the creation of an independent Uganda.

CHAPTER SIX



The First Kabaka Crisis in Uganda 1953 To 1955

Due to the unfair terms of the 1900 Buganda agreement Kabaka Mutesa wasn't satisfied and referred the "1900 agreement as the game of politics for a white man's control". thus, this made him to be with a liberal idea of federalism and Andrew Cohen's idea was of Unitarisim which created tension and suspicion making the 1953 -55 Kabaka Crisis. The first stone to the Kabaka crisis, was set into motion when Mutesa was taken to exile which annoyed the Baganda "nkabiilla Mutesa" hence making it inevitable and the kabaka crisis was buried when the Namirembe agreement was formed in 1955 at Namirembe hill "a hill of peace", "Mirembe" when Kabaka was returned from exile.

The Kabaka crisis was a political and constitutional crisis in the Uganda Protectorate between 1953 and 1955 wherein the Kabaka Mutesa II pressed for Bugandan secession from the Uganda Protectorate and was subsequently deposed and exiled by the British governor Andrew Cohen. Widespread discontent with this action forced the British government to backtrack, resulting in the restoration of Mutesa as specified in the Buganda Agreement of 1955, which ultimately shaped the nature of Ugandan independence.

In 1893 the Imperial British East Africa Company (IBEAC) transferred its administration rights over its territories in modern-day Uganda to the British Government. At that time, the IBEAC's territory consisted mainly of the Kingdom of Buganda, which had been acquired in 1892. In 1894 the Uganda Protectorate was established, and, with Bugandan assistance the territory was rapidly extended beyond the borders of Buganda to an area that roughly corresponds to that of present-day Uganda. The Buganda Agreement of 1900 formalised Buganda's place as a constitutional monarchy (headed by the Kabaka) within the broader British-led Protectorate. Following the creation of the Crown Colony of Kenya and Trust Territory of Tanganyika the British grew increasingly interested in the idea of the provision of 'common services' to the three territories.[2] This resulted, among other things, in the creation of the East Africa High Commission and Central Legislative Assembly in 1948, with competence in certain areas (such as integration of the various railway networks). From 1952 further constitutional reforms were proposed by the new Governor of Uganda, Sir Andrew Cohen. Cohen proposed devolving greater functions from the Protectorate to Buganda, but conditional on Buganda formally accepting its status as a "component part" of the wider Protectorate. Kabaka Mutesa II agreed to this offer, and a joint memorandum was duly published in March 1953.

On 30 June 1953, Oliver Lyttelton, the Secretary of State for the Colonies, gave a speech in London in which he made a "passing reference" to the possibility "...of still larger measures of unification and possibly still larger measures of federation of the whole East Africa territories". Lyttelton's remarks were reported by the East African Standard on 2 and 3 July, prompting the Ministers of the Bugandan Government (headed by Paulo Kavuma) to write to Cohen on 6 July to stress their opposition to such a plan. The Baganda people, who always valued their autonomy and independence, were alarmed by the idea of a broader federation on the model of the Central African Federation. They felt that such a move would result in the integration

of different cultures which would ultimately destroy and engulf their own culture and way of life.

Cohen responded by assuring the Baganda that there was no reason for concern, and that no decision pertaining to the formation of an East African federation would be made without first consulting them. There was a residual feeling in Buganda, however, that Lyttelton had let the cat out of the bag. The incident served to crystallise animosity and apparent slights dating back to the 1900 Agreement, and prompted widespread calls among the Baganda for Bugandan independence as the only protection against British overreach. A reply from the Secretary of State attempting to reassure Mutesa and his Ministers that "the inclusion of the Uganda Protectorate in any such federation is outside the realm of practical politics at the present time" served only to fan the flames. The Bakamas of Bunyoro and Toro, and the Omugabe of Ankole, also wrote to Cohen to express their own fears.

In order to resolve the spiralling crisis, Cohen took a direct approach, choosing to meet Mutesa in person, but a series of six private meetings at Government House did not result in a resolution on the issue of Bugandan independence and the political unrest continued. Frustrated, Cohen told Mutesa that continuing to agitate against the British vision of a single Ugandan state constituted a breach of the 1900 Agreement, as well as a repudiation of the joint declaration of March 1953, and that he had five weeks to reconsider.

Despite the apparent ultimatum, Mutesa, supported by the Bugandan Lukiiko (Parliament) and other neighbouring Kingdoms, continued to push for Buganda secession. This intransigence prompted Cohen to hand him a letter at a final meeting on 30 November 1953 confirming that, under the provisions of Article 6 of the 1900 Agreement, the British Government was withdrawing its recognition of him as the legitimate ruler of Buganda.

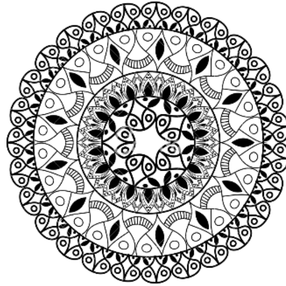
Cohen was fearful that this action would incite violent protest by the Baganda and declared a state of emergency. Mutesa was arrested and rapidly

exiled to London, much to the shock of the Baganda. He would be permitted to live freely, anywhere in the world, but not to return to Uganda. While his supporters lobbied strongly on his behalf, Mutesa himself behaved "as if on vacation", staying primarily at the Savoy Hotel.

Cohen's preference was for a new Kabaka to be installed immediately, but this proved impossible. Exiling the Kabaka, far from resolving the situation, fuelled it. Resistance in Buganda itself was nevertheless mostly peaceful, including public displays of "weeping, mourning and collapsing in grief... Ganda, and especially Ganda women, declared loyalty to the king and denounced Britain's betrayal of its alliance with Buganda", This emotional response, rooted in the centrality of the Kabaka to Bugandan life rather than the personal popularity of Mutesa, took Cohen by surprise and the British struggled to find a way to counter-act it.

Following a well-received Bugandan delegation to London, new negotiations took place in June to September 1954 at Namirembe between Cohen and a constitutional committee selected by the Lukiiko, with Keith Hancock, then Director of the Institute of Commonwealth Studies in London, acting as the mediator. Although an attempt to get the Kabaka's deportation declared ultra vires was unsuccessful, the High Court in Kampala suggested that the use of Article 6 was improper. The British subsequently accepted the return of Mutesa, in exchange for a commitment that he and future Kabakas would make a "solemn engagement" to be bound the 1900 Agreement. A number of constitutional changes within the Government of Buganda and to the national Legislative Council were agreed at the same time, progressing Cohen's reformist goals. Following further negotiations, held in London, the Namirembe conference recommendations were adopted as the Buganda Agreement of 1955 and Mutesa returned triumphant to Buganda.

CHAPTER SEVEN



Constitutional Development in the Uganda Protectorate from 1961-62

First constitutional conference at Lancaster

The first constitutional conference was held in September (8th October 1961). There were delegates from HM Government, the governor of Uganda in the own capacity, the Uganda Government led by Ben Kiwanuka (as chief minister), the opposition UPC, members of the districts and urban authorities. The stakes at the conference were extremely high. Each of those attending was desirous of ensuring that its interest was fully accommodated especially as the primary objective of the conference was the promulgation of a constitution providing for internal self government. [In working out the provisions of the constitution, the objective was to secure that a suitable framework for Buganda's interests was in place].

The conference emerged with many recommendations with the most difficult issue being the relations between the different entities of the protectorate and especially the question of Buganda. In fact, in two instances at Lancaster, the discussions broke down due to these relations in particular are regards;

(a) The issue of the 'lost counties 'and

(b) Issue of elections as to whether they should be 'direct'. The background; to the latter was clear. In1961, the Buganda government had boycotted the leg. Co. elections for among other things the decision that the elections be 'direct' [through the mechanism of indirect elections Buganda would be able to secure representation by candidates who would completely be loyal and dedicated to the interests]. The Uganda government led by DP leader, Ben Kiwanuka, strongly opposed the suggestion by the minister Commission arguing that indirect elections were against the franchise of the people of Buganda. In a very lengthy discussion, Ben Kiwanuka noted that not only was the provision a recipe for instability and unpopular government, but that it was only intended to appease the kabaka and Buganda delegation.

In regard to the lost counties issue the matter concentrated the 7 counties then in north-west Buganda which had been transferred to Buganda as a reward for her assistance in vanquishing Bunyoro]. The matter had always been of concern to Bunyoro because the majority of the populace in the counties was Bunyoro. As for Bunyoro was concerned, it wanted a return of the 7 counties. The matter was not resolved and the Bunyoro delegation walked out. Finally, the delegates were informed that a commission of the Privy Council would be appointed to advise on how the issue could be resolved. In Jan. 1962, a commission was appointed with Lord Molson as its chairman to investigate and make recommendations on the matter.

Apart from these contentious issues, the conference was able to decide most of the issues involving the constitutional make up the executive legislature and judiciary and the operation of these organs. The conference ended on 8th October 1961 with an agreement that independence would be granted exactly a year later on 9th October 1962. Aside the constitutional matters that were resolved, the conference also produced several interesting developments. The most important was the alliance [marriage of convenience] between UPC and Buganda. The merger came mainly because UPC had supported

the kingdom on the issue if ‘indirect ‘elections leading it to believe that it had UPC on its side stemming from this development was the realization by Buganda that the only way to secure its interest would be the creation of a political movement devoted to promotion of such interest. The movement was born and came to be known as kabaka yekka [king alone]. This KY movement would be mobilized for the next elections in 1962 with Buganda this time fully participating, and did in effect register success for UPC with 37 to DP’s 24 and KY’s 21. UPC and KY would form a coalition government which guaranteed UPC a firm majority in the National Assembly.

Second constitution conference opened on 2nd June 1962 under the secretary of state [Maudling] with the governor of Uganda, delegation from UK, representatives of kingdoms, districts, urban authorities and the opposition DP. The work of the conference was mainly done by three committees: -

(d) The constitutional committee;

(e) Citizenship committee, and

(f) Fiscal committee [deal with matters of taxation and finance.

By this time, the minister committee had submitted its report and a new constitution had been prepared on 1st march 1962. Nonetheless, the matters that had not been settled a lancaster were still outstanding that is:

(c) Status of the three other kingdoms; Ankole, Bunyoro, and Toro. Only the question of Buganda had been addressed. These too wanted a federal status. They were also accompanied by the delegation from Busoga [led by kyabazinga] who argued that they too had traditional institutions and so should similarly get federal status.

(d) The ‘lost counties’ issue. The minister commission had visited from jan- may1962 to make recommendations on the counties [the seven were buyaga, bugangayizi, buruli, bulemezi, bugerere, buwekula, and ssingo]. the commission recommended that two of these counties [

buyaga and bugangayizi] be transferred to Bunyoro before independence with the five remaining with Buganda

At the Marlborough house, outstanding matters including the framework of an independent Uganda were generally settled. The problematic issued would remain however that of the 'lost counties. The Bunyoro delegation argued that there was no reason why only two of these counties should be returned. On the other hand, the Buganda delegation argued that the peoples of these counties were settled, happy with Buganda and there was no need therefore to upset the states affairs. This caused statement and because of this, the governor was compelled to take a stand on the issue as;

(d) There would be no immediate transfer of authority;

(e) Administration of the two counties (in question) would be transferred to the central government.

(f) After not less than 3years from the date of transfer, the NA would decide on the date for holding the referendum for the two counties in which the electorate would be asked to make a choice amongst;

The referendum would in effort be the deciding factor on the fate of these counties. The Prime Minister Obote accepted responsibility for administering the referendum. On the last day of the conference, the delegation of Bunyoro declared that the decision made was unacceptable and withdrew. The report was therefore drafted in their absence. Although Buganda did not withdraw, it also declared that the decision was unacceptable. In effect, the lost counties issues remained outstanding. The conference ended on 29th June 1962 with the various parties of delegations) agreeing that the decisions that had been made provided a firm foundation for progress towards independence. The legal instruments that gave effect to the Marlborough decisions were;

3) Independence act if august 1962 which stipulated that Uganda would become independent on 9th October 1962.

4) Uganda independence order in council of 2nd October 1962 which had the independence constitution appendix as a schedule.

Thus, on 9th October, the union jack was lowered for the last time and the new flag for the independence of Uganda was raised. The1962 constitution had been subject of debate, with some politicians arguing that it emphasized divisions, parochialism at the expense of national unity. Scholars like Prof. kanyeihamba consider the 1962 constitution as having hampered the power of government by placing many obstacles in its path. Others have argued that the constitution did not go far enough in decentralizing power and authority and that its problem was too much power in central government.

INDEPENDENT UGANDA- GRAPPLING WITH THE CONSTITUTION (1962-1965)

The structures And Arrangements under the 1962 constitution

The promulgation of the 1962 constitution was a landmark event in Uganda's constitutional history. For the first time, the framework of government was o be undertaken within specific rules that attempted to observe the basic principles of constitutionalism (including separation of power, independence of the judiciary, human rights etc). Never the less the constitutional framework together with the political situation obtaining in Uganda at the onset of independence meant that a number of problems remained. The major of these were;

a) The question of the head to state- not addressed by the constitution.

b) The question of the federal- unitary relations between Buganda and Uganda.

c) The question of the relations between Buganda and Bunyoro over the 'lost counties.

d) Overall problems of governance-its rode and relations between the government and the governed of Lyagoba).

e) Opportunistic tendencies on the part of personalities at the helm of government and political power.

Invaluably, there were other minor problems but these were the most outstanding.

1) The independence constitution had maintained the queen as the head of state and so necessitated the determination of a proper head of state for an independent Uganda. These rose different opinions between the parties, kingdoms and the masses. (With the matter eventually bowing down to two major concerns while the KY and the kingdom of Buganda posed the question as to whether the commoner could rule over royalty.UPC asked whether the Buganda could be trusted).

2) The board membership of UPC opposed the idea that the party should not provide the head of state. However, the several decisions and (debate), it was resolved to give the office of the state to one of the traditional rulers (and specifically to kabaka Muteesa II). when the debate was thus later conducted in the national assembly, the majority vote was in the favor of the traditional ruler as being the only person eligible to be a constitutional head of state. Thus, by the constitution of Uganda (first Amendment) act No.61 of 1963, it was stipulated that the president and the vice president of Uganda would be elected for period of 5years by the national assembly and further that only traditional rulers would be eligible for the offices. Therefore, on 4th October 1963, Sir Edward Fredrick Muteesa II (the kabaka of Buganda) and sir. William Nadiope (the kyabazinga of

busoga) became the first president and vice president of Buganda respectively.[111]

Rather than solving the lacuna in the constitutional framework, the question only to new dimensions and bred new problems. Although the office was largely formed and non-executive (constitutional monarch in west minister-styled government), tensions would begin to surface in the relations between the head of state and prime minister who had the precedence as between the HOS and PM? Who could appear on TV to address the nation? whether Muteesa II should be allowed in the police band. But perhaps more significant (as opposed to these rather petty concerns) was question of allegiance of Muteesa II to both office of HOS and KOB (test would come during referendum on the lost counties) the situation was made worse because the Muteesa and Obote would not stand each other (marriage of convenience turned sour) the tension between these 2 personalities was nonetheless underlined by the broader opposition of Buganda in relations to the rest of Uganda.

The question of Buganda's position in relation to Uganda is without doubt traceable to the period leading up to independence – the minister report 1961 and the conferences. The federal status of Buganda as a major aspect of the 1962 constitution created a tension in which the demarcation of authority becomes all too confused. The potential to flare-up was always manifest in particular as regards to matters of jurisdiction and finance and revenue.

Cf. Kabaka's government and anor vs. AG of Uganda and anor PC app no. s.6 of 1964, AG of Uganda vs. Kabaka's government [1965] 291 coming up in 1965 in the wake of the lost counties referendum a year earlier. The case highlighted how fragile the constitutional framework of 1962 constitution the federal relations of Buganda in a unitary Uganda law was if the lost counties largely marked the end of the upc-ky alliance, this case damned the 1962 constitutional arrangements and spelt its doom. The case involved the

[111] Cf. Jowett lyagoba vs. bakasonga & ors [1963] EA 57, busoga validation act no. 9 of 1963.

distribution of finances between the central government and Buganda government, and how much in a block grant Buganda entitled from the central government. The fact that the matter would up in cpourt and could not not be amicably solved between the 2 parties demonstrates how hostile their relationship had become.

The questions of the lost counties had been the control of the 2nd constitutional conference (Marlborough of 1962) but the under-living tensions that underpinned the matter remained and severed throughout the early years of independence. By 1961 drum magazine depicted that at least ¾ of the people of bugangangaizi were Bunyoro not withstanding 60 years of Buganda rule. In buyaga, the situation was even much more striking with 15 Bunyoro for every muganda. Even sir tito whiny (omukama of bunyoro) maintained that the case for the restoration of these 2 counties on his kingdom could not be logically denied. The tense relations between the 2 kingdoms and the aspirations of the peoples of the counties would be underpinned by the 2 developments in 1963 and 1964.

Joseph kasaraine vs. the lukiiko [1963] EA 472. The applicant mr. kazaraine was convicted for inciting the people of buyaga and bugangaizi not to pay taxes to Kabaka's government and abstracting the chiefs from carrying out their rightful duties of revenue collection. The issue was to whom the jurisdiction over the 2 counties was vested as between the central government and Buganda government. Reference may be made to the second constitutional conference which had directed that the 2 counties should be vested in the central government and so it would obviously follow that the later was entitled to exercise the jurisdiction over the territory. The court would let Buganda emerge jurisdiction more out it seems of a desire not to upset the political set up given the volatile character of the matter, and in any event a referendum was scheduled that would resolve the issue, kazaraine's case is important for a number of reasons.

iv) It underpinned the tensions in the relations between Buganda and the 2 counties

v) It portrayed the confusion which the 1962 constitution had brought about with respect to an issue that was not resolved and independence

vi) It demonstrated the phobias which the fatal arrangements of the 1962 constitution.

Referendum of the lost counties, 1964. Between 1962, the Kabaka's government had labored to justify why the counties should remain in Buganda.

vii) The endowment of Buganda than Bunyoro that the 2 counties would benefit more under Buganda

viii) The benevolence and non-sectarianism which had characterized the Kabaka's rule.

ix) The undesirability of upsetting the admin. Arrangement that had existed for such a long period

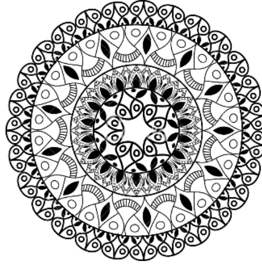
x) The development of the counties had been secured under Buganda's rule. Further, there were concerns that a change of admin. Would adversely affect Buganda and owners. The central government nonetheless went ahead with the referendum which was held on 4th November 1964. The 2 counties overwhelmingly voted to return Bunyoro. Kabaka Muteesa II as president was supposed to sign the instruments confirming transfer but refused to do so. Obote as the prime minister put the issue before the national assembly amends through the constitution of Uganda, the territorial transfer was confirmed. The Buganda government appealed to both the high court and Privy Council and lost. The

referendum was the final nail in the upc- ky coffin marketing the death of the coalition.

xi) There was widespread hostility between Buganda which would gain magnitude. For Obote and UPC, the referendum was boost, and show that they would no longer be held a ransom on Buganda's demand. Several KY mps were in fact persuaded to cross to UPC undermining the strength KY. Similarly, several members of the opposition DP also crossed over and the biggest coup in this regard was Basil Bataringaya (who became minster for internal affairs). UPC was thus stronger than ever to enable the government to control national assembly.

xii) The problem of governance and autocratic tendencies would become a feature of the early years of independence the partner of leadership during the colonial period had emphasized the omnipotence of the ruler and the insubordination of the ruled. That legacy would manifest its self after attainment of independence. The post independence rulers merely stepped into the shoes of their predecessors leading to a new form of autocratic rule. Apollo Obote exemplified this kind of new African leadership that even from the earliest days of independence autocratic tendencies had gradually begun to crip into government both in terms of disrespect of the constitution of the exercise of excessive powers. In the regard, where the constitutional president obstacles, it was then simply bypassed and this tendency was illustrated in a number of cases.

CHAPTER EIGHT



Second Kabaka Crisis of 1966

The attack of mengo "Bulange "in 1966

THE IMMEDIATE CAUSES AND EVENTS UNDERLYING IN 1966 UGANDA CRISIS

On 4th February 1966, the prime minister Apollo Obote was on a tour in northern Uganda where Daudi Ocheng, and Ocholi KY MP members, moved a motion in parliament demanding that there should an inquiry into allegations that the then deputy commander of the army colonel IDDI

AMIN and 2 cabinet ministers Adoko Nekyon and Felix Onama and the pm were involved in the illegal acquisition of gold in the then Congo Kinshasa (later Zaire). It was alleged that the purpose of the smuggling of the gold was to aid the Sudanese rebels (present day SPLA) FIGHTING A WAR of repression against the government in the northern Sudan.

On 9th February 1966, (5 days later), brigadier Shaban Opolot, the then commander of the army proposed the arrest of Idd Amin, but the plan was not executed. On 15th February 1966 following the pm's return to Kampala he set up a commission of inquiry headed by a judge of east Africa and assisted by a judge each from Kenya and Tanzania with William wambuzi as secretary but its report would remain unpublished until Amin came to power in 1971. On 22nd February 1966, one week after setting up of the commission, Mp Obote announced the suspension of 1962 constitution on the grounds that the country had lost stability and curtain people whom he did not name were plotting to overthrow the legal government using foreigners. On the same day, in the afternoon, during a cabinet meeting in Entebbe, 5 cabinet ministers were arrested and detained. The army commander was dismissed and replaced with Colonel Idd Amin. On 2nd march 1966, by way of a special declaration, the officers of president and vice president were terminated with the PM assuming all powers of government on the advice and consent of the cabinet. The incumbent president, kabaka Muteesa II, protested strongly and Obote for the first directly accused him of a plot to over throw the lawful government of Uganda.

On 16th April 1966, the 1962 independence constitution was declared abolished and, in its place, promulgated the 1966 interim constitution (passed by a vote of 65 in favor to 5 against). This interim constitution is known as the pigeon hole constitution since members were assembled in parliament with troops surrounding the parliamentary buildings, and Obote forced them to sign and agree to its promulgation. The members only found copies of it later in their pigeon holes.

THE SALIENT FEATURES OF THE 1966 INTERIM CONSTITUTION

a) Uganda was declared a republic

b) Buganda government was deprived of privileges accorded to her by tge 1962 constitution

c) Parliament was vested with the more powers as was the prime minister.

Otherwise, the provisions basically remained the same. At the end of April, 1966, a stormy session at Bulange (parliamentary seat of Buganda), the lukiiko resolved not to obey the 1966 constitution and passed the resolution demanding that the central government withdraw themselves from Buganda soil by 30th may 1966. It is also alleged that the preparations were made for the secession of Buganda on 23rd may 1966 several chiefs suspected of influencing the decision of the lukiiko were arrested and disturbances were prevalent throughout the kingdom. On the same day (23rd may) the minister of internal affairs promulgated the emergency regulations with inter alia;

i) Prohibited the holding of meetings and consultations.

ii) Prevented the publication of alarming reports.

iii) Imposed several directions measures for the purpose of extraction of information from the suspect

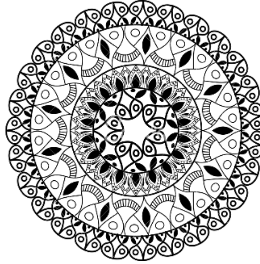
iv) Granted the police powers of such, arrest and detention with condition of deportation and exclusion.

THE IMPACT OF THE 1966 UGANDA (KABAKA) CRISIS

The most prominent impact is with regard to the introduction of elements of militarism into the realm of politics and government in independent Uganda. The introduction for the time gave the military forces an inordinate degree of

direct influence in Uganda's constitutional history. This would also lead a culture of resolving conflicts through military force rather than by peaceful means. This would characterize the politics in Uganda till the present day (e.g., Amin, UNLF, NRA. e.t.c). In other words, our political leaders are much more comfortable resorting to force than to political means to resolving conflicts. The legacy in the Latin maxim 'inter armes leges silent' (in the face of arms, the law is silent) (does not speak) is the more apparent in our history. In effect the military is incompatible with the law (cf Exparte Matovu 1966).

CHAPTER NINE



Understanding the history and the facts about the Buganda agreement of 1900, whether it was a valid agreement.

In history, the term protectorate may be defined as an autonomous territory that is protected diplomatically or militarily against third parties by a stronger state or entity. In exchange for this, the protectorate usually accepts specified obligations, which may vary greatly depending on the real nature of their relationship. However, it retains formal sovereignty and remains a State under international law. A territory subject to this type of arrangement is known as a protected state.[112]

On the 1st of April 1893, Sir Gerald Portal raised the Union Jack formally to establish a British protectorate over Buganda and declared it a British Protectorate on Monday 18th June 1894.[113] Two years later the immediate neighboring territories; the Kingdoms of Ankole, Bunyoro and Toro, and the Chieftaincies of Busoga, were incorporated in the Uganda Protectorate.[114]

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[112] Evolution of constitutional law, public law and Government by Prof. Dr. G.W. kanyeihamba

[113] Morris and Read, The British Common wealth, series NO. 13, 1966

[114] Sir John Milner Gray Early Treaties in Uganda (1888 – 91). Uganda journal, 12 (1948)

The declaration of Uganda as a British protectorate followed the many varied pressures coming from explorers like Morton Stanley who had been impressed by the Kabaka's court in 1875 to mention but a few. However, it was not until 1914 that Uganda as we know it today, with its ethnic groups, finally took shape as a colonial protectorate.[115]

Before the British and Germans contended for control over the territory, Uganda had three different indigenous political systems, namely; the Hima caste system, the Bunyoro Royal Clan system and the Buganda Kingship system. Buganda, the largest of the medieval kingdoms in present-day Uganda, became an important and powerful state during the 19th century. Established in the late 14th century along the shore of Lake Victoria, it evolved around its founding kabaka (king) Kintu, who came to the region from northeast Africa. Kintu, who arrived as the leader of multiple clans, conquered the area, defeating the last indigenous ruler, Bemba Musota, to establish his new state. Kintu, however, ordered the new clans to intermarry with the indigenous people creating the Buganda ethnic group.

Thirty-six kabakas or kings followed Kintu, who mysteriously disappeared after laying Buganda's foundation. While in the early centuries the kings ruled at the mercy of the clan heads, by 1700 they gained more centralized authority over the kingdom.

During the 16th century, Buganda began 300 years of territorial expansion, annexing or conquering a number of chiefdoms and expanding from three provinces to twelve by 1890. Buganda's expansion came as a result of its military superiority over its neighbors. Nonetheless the expansion cost the lives of many of Buganda's kabakas who died in battle with neighbors.

Although it faced no significant military threat from its weaker neighbors, Buganda suffered numerous civil wars because it never developed a system of orderly succession to the throne. Clans often battled for the privilege of

[115] Thomas Pakenham. The Scramble for Africa Abacus 1991 chap. 23.

placing their leaders on the throne. Often kabakas had multiple wives from differing clans to help maintain their power. Upon the death of the kabaka, sons, backed by their clans, made claims on the throne, plunging the nation into frequent civil wars which ravaged the kingdom. By the 19th century, most Buganda kabaka's gained the throne after murdering their brothers who were potential rivals.

Buganda became part of the British sphere of influence in 1894 when that European power backed a successful claimant to the throne, Mwanga. By 1900 the Uganda Agreement with representatives of Mwanga's infant son, who was now Kabaka, made it formally a British protectorate. The 10,000-man Buganda army was disbanded and British courts and colonial officials were placed over indigenous courts and the Buganda bureaucracy.

Today three million Buganda comprise the largest ethnic group in Uganda, representing approximately 17% of the population. Ronald Muwenda Mutebi II is the present king although he has no formal authority in the Ugandan government[116]

The term '*Uganda'* was derived from Buganda. Uganda in Swahili means '***Land of the Baganda*'.** Like most African Countries, Uganda is a creature of European imperialism.[117] The first Europeans to set foot in the Country were accompanied by Swahili speaking Arabs, Nubians and Zanzibaris from the East Coast of Africa.[118] Both the early European adventurers and their aids were unfamiliar with the local languages used and therefore had problems with the nomenclature of some personalities and places they visited. For example, they misspelt and mispronounced certain Bantu words like Buganda hence earlier referring to it as *Uganda* and when it together with its

[116] https://www.blackpast.org/global-african-history/buganda-c-late-14th-century-present
[117] HISTORY OF East Africa (Oxford, 1963)
[118] Thomas Pakenham. The Scramble for Africa Abacus 1991 chap. 23.

surrounding areas were brought under the British Colonial rule, the whole country was named Uganda.

Before examining the core aspect of this piece of writing, it is desirable to make an abridgement of certain stages in the constitutional history of Uganda. **As was rightly observed by the Privy Council in the case of *The Katikiro of Buganda v The Attorney-General.*[119]**

In the mid 1880s, the Kingdom of Uganda was divided between four religious' factions; Adherents of Uganda's Native Religion, Catholics, Protestants and Muslims; each vying for political control.

In 1888, Mwanga II was ousted in a coup led by the Muslim faction, who installed Kalema as leader. The following year, a Protestant and Catholic coalition formed to remove Kalema and return Mwanga II to power. This coalition secured an alliance with the Imperial British East Africa Company, and succeeded in ousting Kalema and reinstating Mwanga in 1890. The IBEACO sent Frederick Lugard to Uganda in 1890 as its chief representative and to help maintain the peace between the competing factions. In 1891, Mwanga concluded a treaty with Lugard whereby Mwanga would place his land and tributary states under the protection of the IBEACO.[120]

"The little I have got from here tells a lot about the book. I take this opportunity to congratulate and thank Appollo Makubuya for coming up with this well researched book," said Kadaga.

Kadaga, in agreement with the book, informed the audience filled mainly by Buganda kingdom officials led by Katikiro, Peter Mayiga that she ever witnessed someone killed in the Naguru estates for breaching the British imposed curfew.

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[119] (1965) E.A 305

[120] 1.h speke, Journal of the Discovery of the source of Nile (1863)

Many things happened during the colonial rule and some or many were not documented. My first time to see a dead body was at Naguru estates. We were told that he was killed for going against the curfew," added Kadaga.

Makubuya told his rich spectator who included former principal judge, justice James Ogoola, former Attorney General, Prof. Khidu Makubuya, Makerere University Law professor, Oloka Onyango that the declassified material unearthed a lot about the hidden colonial history.

"Based on newly de-classified records, this book reconstructs a history of the machinations underpinning British imperial interests in (B)uganda and the personalities who embodied colonial rule. It addresses Anglo-Ugandan relations, demonstrations how Uganda's politics reflects its colonial past, and the forces shaping is future."

Adding; it is a far-reaching examination of British rule in (B)uganda, questioning whether it was designed for protection, for protection for patronage or for plunder.

INDIRECT CONSEQUENCES OF THE 1900 BUGANDA AGREEMENT ON BUGANDA AND UNTO UGANDA

One would not be much in error to say that the 1900 Buganda agreement and its impact on Uganda today is one of the controversial questions that has been given little attention despite its continuous indirect effect on the Pearl of Africa. Its deep-rooted buttress roots continue to haunt Uganda as a whole and Buganda as a kingdom thus one drawing a conclusion that the persistent ongoing silent muscled conflict between Buganda and the central government has been due to the remarkable significance of the 1900 Buganda Agreement.

As a political tool used then by the British to control Buganda, the agreement was a detailed instrument nonetheless referred to as Bugandas Magna Carta, a Constitution of Buganda. It was to regulate the relationship between the

colonial masters and the leaders of the region. It had diverse effects and changed the situation that had existed quite a fiber of years before colonization.

While it is certainly the oldest agreement in the Pearl of Africa, its significance cannot be undermined. Though buried in history, its head still holds and roars out of the history embedded ground. At such a time of the signing, no one would forecast its impact on the region after independence. The agreement that was signed by the kingdom of Buganda and the British Colonial government was later to form a significant idea on the administration of Uganda as a whole. Its significance holds more water from the period after independence reflecting deep to current events in Modern Uganda.

Accordingly, this topic seeks to analyze the consequences of the agreement to Uganda. It presents a systematic, well examined and detailed analysis of how it has indirectly featured in the art of Uganda's administration by the various leaders of the territory mainly focusing on the central government and the Kingdom of Buganda. I thus hope to demonstrate that the agreement was not a temporary compromise designed to short live but rather hold the heart of administration for the territory. I shall start this topic by explaining the agreement, highlighting its key terms that were to become a normal practice then. One task which will further these ends will be a discussion of its impact on Uganda today mainly focusing on Buganda Kingdom and the central government.

THE 1900 BUGANDA AGREEMENT

The agreement was signed in March 1900 between the kingdom of Buganda and the Protectorate government. It formed the basis of British relations with Buganda; the kabaka was recognized as the ruler of Buganda as long as he remained faithful to her majesty. It as well recognized the Lukiiko (council of chiefs).

The chiefs of Buganda signed it on behalf of the kabaka a minor by then Daudi Chwa II on one side and Harry Johnston on the other side signed it on behalf of the Queen of England. This agreement was mediated by the Bishop of Uganda by then Alfred Tucker.[121] This agreement formalized the relationship between the British government and Buganda. It consisted of a number of provisions pertaining different aspects.

Historians have referred to it as "Bugandas Bill of Rights" and others the "Margna Carta of Buganda" or "Buganda Constitution." [122] It was a great and land mark achievement in the relationship between the protectorate government and Buganda. One can vehemently argue that with all the agreements signed then, the agreement has been more effective than others. It has had a lasting effect on Buganda and Uganda in its entirety something that one could not foresee.

The agreement was indeed a comprehensive legal document that virtually covered three aspects that is taxation, administration and land. These provisions shall be expounded later in my further discussion.

On the matters of taxation, the Baganda were to pay a hut and gun tax which was to be contributed to the protectorate government. However noteworthy is that it was agreed that no other taxes would be imposed in Buganda without consent of their government or except as provided by the agreement.

On matters of land, it was divided among the King or Kabaka, the family and his chiefs. Over 9000 square miles estimated to make half of the land in Buganda was to be shared among them while the rest to the British Protectorate government or the Queen of England.

On the avenues of administration, the agreement created a court system "Buganda court system". Under this system, the Kabaka acting through the

See Hertslet, Commercial Treaties 23: 167

[122] John Tamukedde Mugambwa. The legal Aspects of the 1900 Buganda Agreement Revised. Available on https://www.tandfonline.com

Lukiiko (council) was the highest court. As history has it, the kabaka being the traditional ruler was supreme and had unlimited jurisdiction over all Baganda. Thus, the Kabaka under the court system was the highest Court.

Worth noting is that appeals were mandated but only under rare circumstances could they occur and these were only to be made to the Protectorate courts provided procedure was complied with. But the Kabaka courts had no jurisdiction on matters involving a white. In such a situation, the appropriate court was the British court.

On matters of legislation, all laws made by the protectorate government were to apply to Buganda and could be void only if were inconsistent with the terms of the agreement in which event the latter would prevail.[123] It was indeed a detailed document, very elaborative on policy and administration. As Pratt asserts, despite the number of treaties that were concluded with other regions such as the 1900 Tooro agreement and the 1901 Ankole agreement that the British made with the rulers of these two kingdoms, they did not achieve the prominence of the Buganda Agreement.[124] It had a political influence that its effectiveness can be witnessed to influence the Constitutionality of modern Uganda with its consequences discussed herein under.

REINSTITUTION OF TRADITIONAL RULERS

Originally a vassal state of Bunyoro, Buganda grew rapidly in power in the eighteenth and nineteenth century becoming the dominant kingdom in the region. Buganda started to expand in the 1840s, and used fleets of war canoes to establish "a kind of imperial supremacy" over Lake Victoria and the surrounding regions. Subjugating weaker peoples for cheap labour, Buganda

[123] Articles 5, 6, 8 and 10

[124] Low and Pratt, Buganda and British Overule 1900-1955. Two Studies. (Oxford, 1960) p.56.

grew into a powerful "embryonic empire". The first direct contact with Europeans was established in 1862, when British explorers John Hanning Speke and Captain Sir Richard Francis Burton entered Buganda and according to their reports, the kingdom was highly organized.

Muteesa I of Buganda, who had been visited by explorers, like John Hanning Speke, James Augustus Grant and Henry Morton Stanley, invited the Church Missionary Society to Buganda. One of the missionaries from the Church Missionary Society was Alexander Murdoch Mackay. Muteesa I never converted to any religion, despite numerous attempts. In 1884, Muteesa died and his son Mwanga II took over. Most of what is known about Muteesa comes from primary sources from various Kiganda researchers and some foreign explorers, notably John Henning Speke, and the Church Missionary Society. Mwanga was overthrown numerous times, but was reinstated. Mwanga signed a treaty with Captain Lord Lugard in 1892, giving Buganda the status of protectorate under the authority of the British East Africa Company. The British saw this territory as a prized possession. Muteesa I was Kabaka from October 1856 until his death in 1884.

The twentieth-century influence of the Baganda in Uganda has reflected the impact of eighteenth- and nineteenth-century developments. A series of Kabaka amassed military and political power by killing rivals to the throne, abolishing hereditary positions of authority, and exacting higher taxes from their subjects. Ganda armies also seized territory held by Bunyoro, the neighboring kingdom to the west. Ganda cultural norms also prevented the establishment of a royal clan by assigning the children of the Kabaka to the clan of their mother. At the same time, this practice allowed the Kabaka to marry into any clan in the society.

One of the most powerful appointed advisers of the Kabaka was the Katikkiro, who was in charge of the kingdom's administrative and judicial systems – effectively serving as both prime minister and chief justice. The Katikkiro and other powerful ministers formed an inner circle of advisers who could summon lower-level chiefs and other appointed advisers to confer

on policy matters. By the end of the nineteenth century, the Kabaka had replaced many clan heads with appointed officials and claimed the title "head of all the clans".

The sophisticated structure of governance of the Baganda so impressed British officials, but political leaders in neighboring Bunyoro were not receptive to British officials who arrived with Baganda escorts. Buganda became the centrepiece of the new protectorate, and many Baganda were able to take advantage of opportunities provided by schools and businesses in their area. Baganda civil servants also helped administer other ethnic groups, and Uganda's early history was written from the perspective of the Baganda and the colonial officials who became accustomed to dealing with them At independence in 1962, Buganda had achieved the highest standard of living and the highest literacy rate in the country.

Armed war-party of Baganda

The prospect of elections in the run up to independence caused a sudden proliferation of new political parties. This development alarmed the old-guard leaders within the Uganda kingdoms, because they realized that the Centre of power would be at the national level. The spark that ignited wider opposition to Governor Sir Andrew Cohen's reforms was a 1953 speech in London in which the secretary of state for colonies referred to the possibility of a federation of the three East African territories (Kenya, Uganda and Tanganyika), similar to that established in central Africa.

Many Ugandans were aware of the Central African Federation of Rhodesia and Nyasaland (later Zimbabwe, Zambia, and Malawi) and its domination by white settler interests. Ugandans deeply feared the prospect of an East African federation dominated by the white settlers of Kenya, which was then in the midst of the bitter Mau Mau Uprising. They had vigorously resisted a similar suggestion by the 1930 Hilton Young Commission. Confidence in Cohen vanished just as the governor was preparing to urge Buganda to

recognize that its special status would have to be sacrificed in the interests of a new and larger nation-state.

The kings of Uganda around 1960; Mutesa II of Buganda is In the above picture.Kabaka Mutesa II of Buganda, nicknamed "King Freddie", who had been regarded by his subjects as uninterested in their welfare, now refused to cooperate with Cohen's plan for an integrated Buganda. Instead, he demanded that Buganda be separated from the rest of the protectorate and transferred to Foreign Office jurisdiction. Cohen's response to this crisis was to deport the kabaka to a comfortable exile in London. His forced departure made the kabaka an instant martyr in the eyes of the Baganda, whose latent separatism and anticolonial sentiments set off a storm of protest. Cohen's action had backfired, and he could find no one among the Baganda prepared or able to mobilize support for his schemes. After two frustrating years of unrelenting Ganda hostility and obstruction, Cohen was forced to reinstate Kabaka Freddie.

The negotiations leading to the kabaka's return had an outcome similar to the negotiations of Commissioner Johnston in 1900; although appearing to

satisfy the British, they were a resounding victory for the Baganda. Cohen secured the kabaka's agreement not to oppose independence within the larger Uganda framework. Not only was the kabaka reinstated in return, but for the first time since 1889, the monarch was given the power to appoint and dismiss his chiefs (Buganda government officials) instead of acting as a mere figurehead while they conducted the affairs of government.

The kabaka's new power was cloaked in the misleading claim that he would be only a "constitutional monarch," while in fact he was a leading player in deciding how Uganda would be governed. A new grouping of Baganda calling themselves "the King's Friends" rallied to the kabaka's defense. They were conservative, fiercely loyal to Buganda as a kingdom, and willing to entertain the prospect of participation in an independent Uganda only if it were headed by the kabaka. Baganda politicians who did not share this vision or who were opposed to the "King's Friends" found themselves branded as the "King's Enemies," which meant political and social ostracism.

The major exception to this rule were the Many Catholics had felt excluded from the Protestant-dominated establishment in Buganda ever since Frederick Lugard's Maxim machine gun had turned the tide in 1892. The kabaka had to be Protestant, and he was invested in a coronation ceremony modeled on that of British monarchs (who are invested by the Church of England's Archbishop of Canterbury) that took place at the main Protestant church. Religion and politics were equally inseparable in the other kingdoms throughout Uganda. The DP had Catholic as well as other adherents and was probably the best organized of all the parties preparing for elections. It had printing presses and the backing of the popular newspaper, Menno, which was published at the St. Mary's Kisubi mission.

Elsewhere in Uganda, the emergence of the kabaka as a political force provoked immediate hostility. Political parties and local interest groups were riddled with divisions and rivalries, but they shared one concern: they were determined not to be dominated by Buganda. In 1960 a political organizer

from Lango, Milton Obote, seized the initiative and formed a new party, the Uganda People's Congress (UPC), as a coalition of all those outside the Roman Catholic-dominated DP who opposed Buganda hegemony.

The steps Cohen had initiated to bring about the independence of a unified Uganda state had led to a polarization between factions from Buganda and those opposed to its domination. Buganda's population in 1959 was 2 million, out of Uganda's total of 6 million. Even discounting the many non-Baganda resident in Buganda, there were at least 1 million people who owed allegiance to the kabaka – too many to be overlooked or shunted aside, but too few to dominate the country as a whole. At the London Conference of 1960, it was obvious that Buganda autonomy and a strong unitary government were incompatible, but no compromise emerged, and the decision on the form of government was postponed. The British announced that elections would be held in March 1961 for "responsible government," the next-to-last stage of preparation before the formal granting of independence. It was assumed that those winning the election would gain valuable experience in office, preparing them for the probable responsibility of governing after independence.

In Buganda the "King's Friends" urged a total boycott of the election because their attempts to secure promises of future autonomy had been rebuffed. Consequently, when the voters went to the polls throughout Uganda to elect eighty-two National Assembly members, in Buganda only the Roman Catholic supporters of the DP braved severe public pressure and voted, capturing twenty of Buganda's twenty-one allotted seats. This artificial situation gave the DP a majority of seats, although they had a minority of 416,000 votes nationwide versus 495,000 for the UPC. Benedicto Kiwanuka became the new chief minister of Uganda.

Shocked by the results, the Baganda separatists, who formed a political party called Kabaka Yekka, had second thoughts about the wisdom of their election boycott. They quickly welcomed the recommendations of a British commission that proposed a future federal form of government. According

to these recommendations, Buganda would enjoy a measure of internal autonomy if it participated fully in the national government. For its part, the UPC was equally anxious to eject its DP rivals from government before they became entrenched. Obote reached an understanding with Kabaka Freddie and the KY, accepting Buganda's special federal relationship and even a provision by which the kabaka could appoint Buganda's representatives to the National Assembly, in return for a strategic alliance to defeat the DP.The kabaka was also promised the largely ceremonial position of head of state of Uganda, which was of great symbolic importance to the Baganda.

This marriage of convenience between the UPC and the KY made inevitable the defeat of the DP interim administration. In the aftermath of the April 1962 final election leading up to independence, Uganda's national parliament consisted of forty-three UPC delegates, twenty-four KY delegates, and twenty-four DP delegates. The new UPC-KY coalition led Uganda into independence in October 1962, with Obote as prime minister and the kabaka as head of state.

Uganda achieved independence on 9 October 1962 with the Kabaka of Buganda, Sir Edward Mutesa II, as its first president. However, the monarchy of Buganda and much of its autonomy was revoked, along with that of the other four Ugandan kingdoms.

At this time, the kingship controversy was the most important issue in Ugandan politics. Although there were four kingdoms, the real question was how much control over Buganda the central government should have. The power of the king as a uniting symbol for the Baganda became apparent following his deportation by the protectorate government in 1953. When negotiations for independence threatened the autonomous status of Buganda, leading notables organized a political party to protect the king. The issue was successfully presented as a question of survival of the Baganda as a separate nation because the position of the king had been central to Buganda's precolonial culture. On that basis, defense of the kingship attracted

overwhelming support in local Buganda government elections, which were held just before independence. To oppose the king in Buganda at that time would have meant political suicide.

In 1967, the prime Minister Apollo Milton Obote changed the 1966 constitution and turned the state into a republic.[125] On 24 May 1966 the federal Ugandan army attacked the royal compound or Lubiri in Mmengo. They shelled the palace with the king Mutesa II trapped inside. The king fought his way out of the burning building and with the assistance of the priests at a seminary in Lubaga escaped Uganda and found exile in London where he died in mysterious circumstances (blamed on alcohol poisoning) three years later.[citation needed] The Ugandan army turned the king's palace into their barracks and the Buganda parliament building into their headquarters. It was difficult to know how many Baganda continued to support the kingship and how intensely they felt about it because no one could express support openly.

On 25 January 1971, Obote was deposed in a coup by the head of the army, Idi Amin. After a brief flirtation with restoration, Idi Amin also refused to consider restoration of the kingdoms. By the 1980s, Obote had once again returned to power, [citation needed] and more than half of all Baganda had never lived under their king. The Conservative Party, a marginal group led by the last man to serve as Buganda's prime minister under a king, contested the 1980 elections but received little support.

In 1986, the National Resistance Movement (NRM), led by Yoweri Museveni, would take power in Uganda. While fighting a guerrilla war against Obote, the NRA government upon the completion of the five-year guerrilla war fair staged by the former defense minister and presidential candidate; Yoweri Kaguta Museveni following his allegations that the 1980 election had been rigged by Uganda People's Congress. The war was ragged in the northern district of Buganda (Luwero) and it was highly supported by

[125] Constitutional history and politics of East Africa: Prof. G.W. Kanyeihamba

people in the area who had hope in Museveni of restoring their kingdom and besides he was getting rid of Obote Bugandas lasting enemy from the time of independence.[126]

As Prof Oloka Onyango notes, restoring the traditional rulers was a hard step in the political sphere at a time. It required a determined leader with a highly focused mentality as to its ramifications.[127] Buganda had been at the center of Uganda's politics before and after independence thus had fixed a buttress root in the heart of Uganda's politics and sidelining it as a leader was a formidable challenge. Therefore, the question of Buganda in Uganda had to be treated with at most due care for one to successfully lead Uganda.

One had first to establish a gigantic friendly relationship with the Baganda and secondly, they had to adopt mechanisms of controlling the kingdoms influence in the politics of the central government.[128] For this had formed the basis for political scuffle in the post-independence period and therefore failure to control Buganda could pose a challenge to Ugandas leader at a time.

One could arguably say that Museveni had appreciated the mechanisms of British control over Buganda adopted in the 1900 Buganda agreement. These included reducing on the power of the Kabaka to form a military force, checking on the kingdoms financial base by limiting its revenue base among others. These among other powers had been enjoyed by the traditional rulers in the pre-colonial era before signing the agreement. But in order to control Buganda and its supremacy, the British employed mechanisms that restrained and checked on the powers of the traditional rulers.

[126] The restoration of the Buganda Kingdom Government 1986-004: Culture, contingencies, constraints. Nelson Kafir. The Journal of Modern African Studies.

[127]

[128] Apter, David Ernest (1997). The Political Kingdoms in Uganda: a study of bureaucratic nationalism.

NRM leaders could not be sure that the Baganda would accept their government or their Ten-Point Programme. The NRA was ambivalent in its response to this issue. On the one hand, until its final year, the insurgency against the Obote regime had been conducted entirely in Buganda, involved a large number of Baganda fighters, and depended heavily on the revulsion most Baganda felt for Obote and the UPC.

On the other hand, many Baganda who had joined the NRA and received a political education in the Ten-Point Programme rejected ethnic loyalty as the basis of political organization. Nevertheless, though a matter of dispute, many Ugandans reported that Museveni promised in public, near the end of the guerrilla struggle, to restore the kingship and to permit Ronald Mutebi, the heir apparent, to become king. Many other Ugandans opposed the restoration just as strongly, primarily for the political advantages it would give Buganda.

Controversy erupted a few months after the NRM takeover in 1986, when the heads of each of the clans in Buganda organized a public campaign for the restoration of the kingship, the return of the Buganda parliament building (which the NRA had continued to use as the army headquarters), and permission for Mutebi to return to Uganda. Over the next month, the government struggled to regain the political initiative from the clan heads. First, in July 1986 the prime minister, Samson Kisekka – a Muganda – told people at a public rally in Buganda to stop this "foolish talk".

Without explanation, the government abruptly ordered the cancellation of celebrations to install the heir of another kingdom a week later. Nevertheless, the newspapers reported more demands for the return of Mutebi by Buganda clan elders.[129] The cabinet then issued a statement conceding the intensity of public interest but insisting the question of restoring kings was up to the forthcoming Constitutional Assembly and not within the powers of the interim government. Then, three weeks later, the NRM issued its own

[129] The Uganda Journal Vol.IV No.2 1950

carefully worded statement calling supporters of restoration "disgruntled opportunists purporting to be monarchists" and threatening to take action against anyone who continued to agitate on this issue.

At the same time, the president agreed to meet with the clan elders, even though that gave a fresh public boost to the controversy. Then, in a surprise move, the president convinced Mutebi to return home secretly in mid-August 1986, presenting the clan elders with a fait accompli. Ten days later, the government arrested a number of Baganda, whom it accused of a plot to overthrow the government and restore the king. But while Museveni managed to take the wind from the sails of Buganda nationalism, he was forced to go to inordinate lengths to defuse public feeling, and nothing was settled. The kingship issue was likely to re-emerge with equal intensity and unpredictable consequences when the draft for a new constitution was presented for public discussion.

The monarchy was finally restored in 1993 [130], with the son of Mutesa II, Ronald Muwenda Mutebi II as its Kabaka. Buganda is now

[130] With the formation of the tradition rulers act

a constitutional monarchy, with a parliament called Lukiiko that sits in parliamentary buildings called Bulange. [131]The Lukiiko has a sergeant-at-arms, speaker and provisional seats for the royals, 18 county chiefs, cabinet ministers, 52 clan heads, invited guests and a gallery. The Kabaka only attends two sessions in a year; first when he is opening the first session of the year and second, when he is closing the last session of the year.[132]

The NRM government allowed and facilitated the return of the traditional leaders, and the revival of traditional, cultural and social aspirations of the people of Uganda

Although this was feared by many opponents as a return to the "dark ages", and all kinds of imaginary fears were predicted by the ever-present prophets of doom, we have all seen that these traditional institutions have enabled Uganda to continue its peaceful journey of revival.

The traditional leaders have contributed tremendously to the unity, happiness and development of their various peoples in Uganda. Under federalism, their potential as mobilisers for development would even be greater.

Valuable lessons have obviously been learnt from the History of Uganda, and the 1966 Crisis. The people of Buganda, just as the Central Government, appreciate the great need to iron out the areas of controversy that led to the 1966 crisis and the collapse of federalism. The people of Buganda, and we believe many other people from other parts of Uganda, would like the question of the federal system of Government to be revisited and re-introduced with necessary modifications to bring the system in line with today's prevailing social, economic and other conditions and circumstances. The restored tradition leaders that where restored in 1993 among which

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[131] M S N Semakla Kiwanka 1972 Histoy of Buganda from the foundation of the kingdom to 1900

[132] Miscellaneous Application No 74 of 1993.aslo See Mutebi Coronation Hit by Injunction New Vision 29th May 1993

include the king of Busoga(Kyabazinga), King of Buganda (Kabaka), king of Bakongyo (Rwezururu),king of Toro(Omukama) , King of Bunyoro(Iguru) ,chief doms such Omukuka of Bugishu , Imorimori of Iteso etc. the restored leaders restoration was just left on form than of a substance ,there powers was reduced on grounds of the sbenefits of services rendered to them among which include the lead car, security of the UPDF .Thus the restored traditional leaders are more of benefiting than doing the cultural leadership i.e. the appointing of the king of Busoga as the ambassador ,this created a loophole of the king having to offices to manage as per the issue of Muteesa when he was the President same also the King thus causing the Kabaka Crisis of 1966 causing the collapse of the Buganda kingdom. The restoration of traditional rulers in Uganda is just political oriented as to govern Uganda but not service delivery. In so analyzing per article 3 of the Buganda agreement when kabaka's powers where reduced, in resolving to the current affairs the Kabaka's power were not adjusted but tightened them the more, and this why Kabaka can be stopped to attend functions "Kayunga -Bugerere saga".

The estimated rights that would have been given to the restored traditional leaders

Tax Exemption for Traditional Leaders: The Kabaka and other traditional leaders should be exempted from paying tax in recognition of their developmental, mobilising, cultural and leadership roles. This had been the position in 1993 when these institutions were restored. The law restoring the traditional institutions also provided that they should be exempt from taxation. Through an inadvertent omission, when the provisions relating to restoration of the traditional institutions were imported into the 1995 Constitution, the provisions relating to tax exemption were repealed with the rest of the 1993 Statute.

Immunity from Criminal Prosecution: The traditional Leaders should also be exempted from criminal prosecution. This is the position in many

countries such as Ghana, where Traditional Leaders similar to ours, exist.in Uganda traditional rulers don't have immunity, the recent scenario in 2016," the detaining of King of Bakongyo in Luzira prison"

Protocol: The people of a particular area hold their traditional Leader in high esteem. They therefore view it as a humiliation that the Traditional Leader should be relegated to the current low protocol ranking on state functions taking place in his area. We propose that the Traditional Leader in whose area a state function is held should take precedence over all people except the President and Vice President. This was the position under the 1962 Constitution and was respected by all Ugandans

Buganda Agreement: A check on pre-colonial powers.

Upon their first landing in the region, most of the territory's population was organized into chiefdoms that were headed by cultural rulers. These provided effective administration for these chiefdoms and thus the subjects were obedient to them not because they had to but because they felt it true to be loyal and obedient to their rulers. These could set the rules that complied with their customs. Thus, customs formed a driving instrument for their relationship and wellbeing.

Originally, Buganda grew rapidly in power in the eighteenth and nineteenth century becoming the dominant kingdom in the region. The Kingdoms expansion is noted by historians to have started in 1840s where it used fleets of war canoes to establish an imperial supremacy near and around the great Lake Victoria shores and the surrounding region. Thus, having expanded, it became easy for Buganda to subjugate weaker people to cheap labour, thus grew into a powerful "embryonic empire".[133]

[133] Sogan, Eli. (1985). At the Dawn of Tyranny: The Origins of Individualism, Political Oppression and the State. NYC, USA: Vintage Books/Random House. Pp3.

Buganda's first contact with Europeans is noted to have been in 1862 when British explorers John Hanning Speke and Captain Sir Richard Francis Burton landed in Buganda. These were amazed and their minds overtaken by the well-organized system that they found not expected of such a society of Africans. By that time, Buganda was under the leadership of Muteesa I that had an upper hand in the invitation of the missionaries that laid grounds for colonial rule in Buganda.[134]

In 1884, Muteesa I died and his son Mwanga II took over being a norm and custom among the Baganda. Mwanga was over thrown numerous times but was reinstated. It was Mwanga that signed a treaty with Captain Lord Lugard in 1892, giving Buganda the status of protectorate under the authority of the British East African Company.[135] After Kabaka Mwangas exile, it's the regents that signed the agreement on behalf of his successor son Daudi Chwa which came to be known as the 1900 Buganda Agreement.

The agreement had an impact and perhaps checked on the powers of the Kabaka and the autonomous nature of the kingdom for instance; the kabaka was referred to as Ssabataka i.e., head of Bataka, Ssabasajja i.e., head of all men. Thus, he being the Ssabataka was the owner of the land in Buganda being vested in him by the Baganda to protect it on their behalf. Thus, his control and ownership of the Buganda land was not limited. However, with the signing of the Buganda Agreement, his control over land was limited.

Article 15 of the agreement provided for the division of land that is into crown land and mailo land. Crown land was to be long to her majesty under the British Protectorate government while mailo land is one that was given to the kabaka, family and the chiefs. This was a limitation on the powers of the kabaka over land.

[134] Mackay, A.M. Pioneer Missionary in Uganda.
[135] Perham, M. The Diaries of Lord Lugard: East Africa 1889-1892, vol 1-3. Evanston: North Western University Press, 1959.

Furthermore, the kabaka was the source of power; he could appoint, discipline and dismiss any official of the kingdom at his will. This helped in inspiring a lot of loyalty not only in the subjects but also his chiefs. This was a sign of obedience to the kabaka. As it had been with land, the 1900 agreement limited and checked on the powers of the kabaka nonetheless, he was as well made a subject of the British authority which weakened him politically. **Article 6** provided that “so long as the kabaka, chiefs and people of Uganda shall conform to the laws and regulations instituted for their governance by her majesty’s government and shall cooperate loyally with her majesty’s government in the organization and administration of the said kingdom of Uganda, her majesty’s government agrees to recognize the kabaka of Uganda as the native ruler of the province of Uganda under her majesty’s protection and over rule.”

The impact of this was that the Kabakas powers as a ruler of Baganda were not recognized but were subject to his obedience and loyalty to her majesty’s government. Further, the Kabaka had powers to punish anyone that conducted himself in a manner contrary to t norms and customs of the Baganda. This was a superior power vested in him and in him alone. Not known to many, this was checked by the agreement in order to make him a subject of British authority.

Though he was to remain the highest, a new idea of appeals was introduced where any one aggrieved by the decision of the Kabaka through the council could appeal to the protectorate courts.[136]

A further analysis of the agreement was the limitation of the kabakas powers over collection and determination of revenues. The Kabaka could instruct the chiefs to collect revenue for the general administration and welfare from all the natives around the kingdom. This like land and powers over punishment was checked on under **Article 12** where the new taxes were introduced and payable to the protectorate government.

[136] Low and Pratt, Buganda and British Overule 1900-1955, Two Studies. Oxford, 1960.

One can ably note that all the terms of the agreement were intended to control Buganda agreement and its rulers for the effective administration of the whole protectorate of Uganda. The agreement thus limited the rulers' powers over taxation, revenue and land which turned them into mere puppets to the protectorate government.

It's in no doubt that it's the laid down limitations for the control of the region that were invoked by president Apollo Milton Obote thus ending up partying ways with the then president Kabaka Muteesa II over Ugandas administration leading to the 1966 kabaka crisis. As George William Kanyeihamba notes, the 1962 independence Constitution had failed to distinguish the powers of the president and the prime minister. Muteesa II was the kabaka of Buganda and the president of the country at a time thus failed to separate the cultural powers from the presidential powers.[137] Because president Obote intended to check on the powers of Muteesa having noted its constitutional effect thus the outcome was the 1966 Kabaka crisis.

This having formed the basis of controversial misunderstanding between the leaders of the central government and Buganda, for one to maintain peace and ably lead Uganda, they had to formulate mechanisms that could check on the powers of the Kingdom and the cultural rulers and their influence in politics of Uganda. These and other mechanisms are what were adopted by the NRM government before the reinstoration of the traditional rulers and all these were as a consequence of the 1900 Buganda Agreement.

The Agreement: A check on reinstitution of rulers.

It's worth noting that indeed the agreement was not in existence as an effectively operating instrument at the time of reinstitution of these rulers but its check on their reinstitution was through its constitutional impact fixed in the 1995 Constitution of Republic of Uganda. Thus, a well drafted

[137] George William Kanyeihamba. Constitutional Law and Government in Uganda.

conclusion would say that it checked on the reinstitution through the Constitution as shall be discussed in the coming paragraphs.

In early 1990s, the reinstitution was a daily discussion in every corner of Uganda by the natives and leaders. Excitement was an everyday program especially to the Baganda who saw kabakas reinstitution as a defeat to Obote and other opponents of the kingdom and perhaps a start of the long-awaited autonomy status attained at independence.

It is in no doubt that majority of the people of Buganda had supported NRA guerilla war fair with a view of having their traditional rulers restored to their thrones. Besides this, Ronald Muwenda Mutebi the kabaka of Buganda had himself indulged in supporting the war fair having been promised the restoration of the kingdom. In many times, he was seen visiting the NRA areas liberated from Obotes regime.[138] Ideally speaking, there was nothing behind the alliance of Buganda with NRA than the restoration of Buganda.

As Kasfir remarks, the restoration of the monarchy and the return of "ebyaffe" led to the unlikely tacit alliance between the kingdom supporters and the NRM.[139] Upon the completion of the guerilla war most of the traditional cultural leaders returned to Uganda and among these was Kabaka Ronald Muwenda Mutebi who returned in 1986. Many of his strongmen like Samson Kissekka and Abu Mayanja had been inculcated into the central government as vice president and Attorney General. These were later to play pivotal roles in the eventual restoration of the kingship.

However, though it was to earn the president more support from the masses, the reinstitution of these rulers proved a puzzle in his mentality. The biggest challenge was on how they were to be controlled to check on their influence in the political affairs as a mechanism of deviating from the past nasty history of endless blood shade and political crisises due to their influence. Indeed, much attention had to be drawn on the exact nature of regime or system the

[138] See Karugire 1988. pp.76-77
[139] See Kasfir 1995 at p.154.

restored Kabaka was to operate. Besides, the other question that the government faced was on how the monarch would fit into the overall operation and governance of the country and how to raise funds to support its activities.

That said, NRM stood firm on its idea that the cultural rulers were not to be allowed to establish armed forces as well as indulging in political affairs if peace and firm administration was to be attained. This meant that they were to be restored as constitutional monarchies that would be purely cultural.

In order to achieve this, the government through the promulgated 1995 Constitution provided laws that could guide on the reinstitution and operation of the rulers and the traditional kingdoms. This was enumerated under **Chapter 16.[140] Article 246 (1) provides that subject to the provisions of this constitution, the institution of traditional leaders or cultural leaders may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.**

Other provisions are as well clear, their institution would make them corporation sole with perpetual succession and with capacity to sue or be sued but the most important was **paragraph (e) which provides that a person shall not while remaining a traditional leader or cultural leader, join or participate in partisan politics and paragraph (f) which provides that a traditional or cultural leader shall not have or exercise any administrative, legislative or executive powers of government or local government.[141]**

From the mentioned constitutional provisions, it was clear that the institution of these leaders was bound to happen on condition that they do not indulge in the political matters. Museveni once remarked that **"I have**

[140] 1995 Constitution of Republic of Uganda as amended

[141] 1995 constitution of Republic of Uganda as amended

been emphasizing to them that it would be better if they confined their activities to culture without trying to get involved in politics or administration. Some have listened but others have not."[142]

It would be happiness everywhere though it would not be fully attained happiness. The institutions like Buganda Kingdom had been deprived of the autonomous nature which they had acquired during independence as an appreciation for its efforts towards the colonization of Uganda. The kabaka was not to legislate on anything as all legislative duties were to be clothed onto the government. The kingdom was not to form an army of its own thus defeating the powers the kabaka enjoyed in the pre-colonial period and lastly was the idea that they would not achieve the federalism that they had for long desired. The traditional ruler's powers were thus restrained and limited to just honorary men with no such powers as held at pre-colonial period.

However, as earlier noted Bugandas influence in Uganda's political arena was one of dog and born. Though the law was in force to check on their powers as cultural or traditional rulers, no one could defend an argument that the question of Buganda in Uganda had been solved. The Kingdom continued to pursue its interests as per independence though the central government was to continue suppressing them. This was to later culminate into a series of clashes between the central government and most of the traditional rulers. The most commonly remarkable conflict was one in 2009 when the kabaka and his prime minister were denied access to Bugerere by the Banyara in conjunction with the central government forces.

Indeed, Thursday 10th September 2009 marked the beginning of three dark days of riots within Kampala city and other parts of Buganda. One would say that the two parties had learnt nothing and forgot nothing from the history of Buganda. As usual, business was at a normal point in the country when the day for the Buganda Youth Celebration was almost clocking. The kabaka had portrayed interest in his ambition to celebrate the day from Bugerere a county

[142] Yoweri Kaguta Museveni 1993.

of Buganda in Kayunga district. A group of Banyara led by retired UPDF captain Kimezze declined the visit of kabaka alleging that he had not sought permission from him.[143] This was a clear indicator that they had proven a point of wanting to secede from Buganda and that the Kabaka had no control over them.

The outcome of this was a series of riots that filled the entire central region of Uganda as the Baganda objected this as an insult from the central government that sent forces to stop the kabaka from accessing Bugerere. This was the first clear manifestation that the control of powers of these leaders would form a formidable challenge to the government.

Later on, 26 November 2016, the central government clashed with yet another kingdom; Rwenzururu kingdom led by Charles Wesley Mumbere. This happened after allegations of planned secession by the kingdom to join another country. It saw the UPDF forces and police raid the government offices of Rwenzururu kingdom, killing eight Rwenzururian royal guards and arresting others. On 27th November, a mob of civilians had attacked and killed two policemen. The police together with the UPDF arrived at the Rwenzururu royal palace. Brigadier Peter Elwelu who was in charge of the UPDF soldiers and policemen was ordered to storm the police in an hour if conflict had not been resolved peacefully.[144] President Museveni issued an ultimatum to Charles Mumbere, the omusinga (king) of Rwenzururu, demanding that he surrenders his guards and their weapons within two hours which he declined thus the attack that left over 87 royal guards dead and at least 16 injured.[145] These and others were to be continuously witnessed as the central government tries to control the influence of the cultural leaders.

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[143] Charles Juuko. Uganda: Banyara choose army officer as King. New Vision.

[144] Rwenzururu King arrested after shoot out with UPDF in Kasese. NTV Uganda 27th, November 2016.

[145] Uganda Rwenzururu: King Charles Mumbere Charged with murder. BBC News. 29th November 2016

Buganda kingdom having been at the heart of Uganda in the struggle for independence, it has proved that sidelining it from political affairs of Uganda by the central government is next to impossible. This is so because the political decision of the central government directly affects the affairs and administration of the kingdom. Thus, the Buganda cannot settle if the central government is continuously weakening its existence.

Thus, the concluded 2021 general elections saw the kingdom indirectly involved in the elections through rallying behind the muganda candidate Robert Kyagulanyi Ssentamu the flag bearer and principle of National Unity Platform. This saw majority of the NRM candidates lose in central Uganda.[146] **"Buganda kingdom has been campaigning for the leaders who have interests of Buganda at heart"[147]** This was attributed to the fact that the kingdom intended to check on the suppression of the central government that is aimed at completely weakening it.

Thus, a well drafted conclusion would state that the reinstitution of traditional rulers and cultural leaders with a constitutional limit on the conduct of their affairs and governance was a clear manifestation of the indirect impact of the 1900 Buganda agreement that influenced Constitutionalism in the 1995 Constitution. As a result of this, traditional leaders and cultural leaders have lost their autonomous powers, stature and dominance that were once owned in the pre-colonial period.

Condoning of Kampala (Kampala in Buganda not for Buganda)

Since the restoration of traditional leaders in Uganda around 1993, the Buganda Kingdom has developed unusually effective institutions, financing

[146] Monitor. Saturday, January 23, 2021. Government blames NRM Buganda loss on sectarianism but Mengo attributes it to corruption, killings. Available on https//www.monitor.co.ug

[147] ibid

mechanisms and policy tools, re-building itself as a quasi-state.[148]But amidst all this, the monarch is finding it difficult to translate the king's symbolic appeal into actual mobilization for development, shedding doubts on one of the main justifications for the kingdoms rebirth. On top of this is Bugandas claims to political participation which clash with the competing notion of sovereignty of the post-colonial state. Its capital is Mengo located in Kampala which once belonged to Buganda but with colonial dominance and political influence after independence, it was turned into Ugandas capital thus slipped off Buganda's shoulders to date. But nonetheless Buganda continues to silently reclaim the capital through its indirect political participation where it supports the opposition members of government with a view of obtaining its long-desired objective, "Federalism."

The relationship of Kampala city to Buganda kingdom

Kampala District consists of the most important and most cherished traditional and cultural sites, which actually make Buganda. Among these are: **the Kasubi Tombs** where several Buganda kings are entombed; **Lubiri**, Kabaka's traditional official residence; **Bulange**, the seat of Buganda administration; the **Butikkiro; Kabaka's Lake**, an important traditional site; **Mujaguzo Palace** at Kabowa; **Kalinda Well** an important traditional water fountain for the Kabaka and several traditional functions in Buganda.

Reasons Why Kampala district be part of Buganda

The current constitution omitted to include Kampala district among the districts that make up the Kingdom of Buganda. To omit the Kingdom's most important and sacred traditional ancestral institutional sites, is viewed

[148] Pierre, E. Born –Again Buganda or the limits of Traditional Resurgence in Africa. The Journal of Modern African Studies (Vol 40 N0.3(Sep.,2002) pp.345-368. Cambridge University Press.

by Baganda as illogical, unfair and an unnecessary humiliation and mockery of their culture and disrespect for their cultural institutions. Some regard it as occupation.

Several Central Government institutions such as State Houses and Lodges, Military Barracks, Research Centres, airports are situated in various areas in Buganda and the rest of Uganda. *None of these have had to be declared to be outside their traditional Districts.* We propose that Kampala should be part of Buganda as it has always been, and the Capital and other Central Government institutions should continue to be in Kampala like they continue to be in all other areas of Buganda and Uganda.

However, federalism does not exclude or negate Decentralisation. The two must co-exist. In all countries where there is a federal system, there is also a decentralisation system. The federal system is only between the central government and the regional government. The arrangement between the region and the village level is a decentralised system.

Decentralisation is a system which takes services down to the people. It cannot be left out or ignored. It is an effective local government system under federal regional governments. All federal systems around the world also have a decentralisation system under the federal system. Even Uganda's history with federalism bears this out clearly. From 1900, although Buganda was a federal state, its local administration was done through a system of decentralisation. This was crystallised and is reflected in the Buganda Local Government Councils Law, 1965, which is in many respects similar to our current Local Government Statute, and the Great Lukiiko (Election of Representatives) Law, 1953, of the Kingdom of the time that provided for election of local government officials in Buganda. The Masaza system down to Batongole is a decentralised system.

Decentralisation becomes a viable system of local government administration at the regional level and co-exists effectively with federalism in Uganda.

The introduction of the Federal system of government will not significantly alter the current decentralisation system. Districts or Masaza or by whatever names called, will continue with virtually the same rights and responsibilities except that they will no longer be directly controlled by the Central Government but by their respective regional governments.

Under the Federal system of government, MPs representing Districts in the National Parliament will continue to do so. It does not have to affect the LC system or LC leaders. Parliament will still be able to create new districts. The Federal system arrangement is only there to enhance development based on ECONOMICALLY VIABLE units. It is not about disenfranchising anyone.

Pre-colonial and Colonial Kibuga (City)

The word "Kibuga" is a Luganda notion for "City." The Kibuga was the epitome of their pride, military life and political administration. It was also a symbol of a cultural center. The place was co-culturally important to them that non-Baganda were not allowed to enter without permission.[149] In the pre-colonial times before the kingdom could get exposed to the outside world, it owned its Kibuga. But noteworthy is that this Kibuga moved according to the wishes of the king. This means that every King could build his own city.

From the time of Suuna IIs death in 1856 up to when Fredrick Lugard arrived in Buganda, the Kibuga had moved to 10 different locations. When he first arrived, John Speke, the city of the kingdom of Buganda was in "Bandabarogo" presently known as "Banda" a city surbab in Kampala from where he met Muteesa I while Rev C. T Wilson met him at Rubaga in 1875. Besides this, Muteesa had constructed another palace in Nabulagala. But since 1885, Mengo has been the seat or Kibuga of the kingdom.

[149] Monitor. Saturday, March 21, 2015. The Kibuga: Bugandas lost Capital. Available on https://www.monitor.co.ug

This city was located in Kyadondo one of the counties created by the 1900 Buganda agreement. The Kibuga had wide and well swept roads… "The principal roads were about 20 yards wide. Others were narrower while the small branch roads were not more three yards wide."[150] In their administration as kings, they could send instructions to the various people of Buganda in the different counties inviting them to come and repair sweep and clear these roads. This was a "bulungi bwansi" practice among them. R.F. Burton tried to describe the tangible size of the city (Kibuga). In his book, he relied on information collected by Snay Bin Amir an Arab trader, who described the Kibuga as "…the settlement is not less than a day's journey in length, the buildings are of cane and the circular huts neatly arranged in line are surrounded by a strong fence which has only four gates."[151]

However, in 1907-1908, the first survey of the Kibuga (city) was done by H.B Thomas and A.E. Spence who put the kibugas size at 20 sq. miles. It covered areas of Natete to the west of Mengo, Kibuli areas of current Kampala, East Mulago and Kabowa to the South. Indeed, it was a huge city that fit within the supremacy of the kingdom at a time. It was not until 1890 that future of the Kibuga was threatened by the coming of Lugard and the setting up of what he describes in his book "The Rise of an Empire." He described it as "He (Mwanga) gave the little knoll on which my camp was pitched named Kampala, also the plantation at the foot of the shortest slope which i greatly desired to acquire as it was owned by the rowdy set belonging to the Fransa (French) who were continuously creating a disturbance."[152]

In 1899, the Council General signed a notice under **Article 99 of the Queens Regulation** which provided for sanitary rules for an area with a radius of three miles of Mengo but this was declined by the Kingdom administration that greatly objected the idea.[153] According to a letter dated

[150] Roscoes Book. The Baganda.
[151] R.F. Burton. The Lake Region of the East Africa. (1860)
[152] Fredrick Lugard. The Rise of an Empire. 1890
[153] The Queens Regulations.

22nd February, 1900, from the katikkiro to Sir Harry Johnston, expressed the Bugandas fears that the passing of the ordinance was going to greatly be a threat to their pride. He thus remarked **"Our very great fear is that this notice will give the Europeans in their place a great power over our Kibuga."**[154] To express togetherness on this matter, most of the Baganda supported sir Apollo Kagwa and among these were chiefs. "i fear very much what has happened, and the Europeans must not eat our land which has belonged to our kings and our forefathers."[155]

Peter C.W. Gutkind tried to demonstrate the divide between the two by comparing the distance between the two seats of government, one in Entebbe and the other Mengo when he notes that, "The degree of formality is very considerable down to such details as official letters bearing the stamp on the service of his highness the kabaka."[156]

THE FALL OF MENGO (RISE OF KAMPALA)

Not much anticipated, the fall of Mengo (Kibuga) the capital of Buganda started with the arrival in Uganda of Lugard who was the representative of the imperial British East African Company, the precursor to British colonialism in Uganda, that sowed the seeds of the kibugas downfall in what he termed "The little Knoll" was where he pitched his camp and became the government station outside Entebbe where the official protectorate office was located. It also housed the Swahili and Sudanese soldiers he came with.

Lt Col Sadler in 1902 made a further step and announced the creation of a board to define the boundaries of the new city of Kampala. This ended up providing for compensation of the land owners that were West and South of Lugards original knoll for the expansion of Kampala. Further, in his detailed

[154] Buganda archives file S.12/00
[155] Ssekiboobo of Kyagwe. A local chief.
[156] Peter C.W. Gutkind. The African Administration of the Kibuga of Buganda.

later on February 18th 1902, Sadler expressed his view to the principal medical officer expressing why he had acquired that land which was for settlement of Europeans. Despite continuous protests by the Baganda through its Katikiro, the Europeans declined this.

In 1903, the Uganda Township Ordinance was declared. This provided that the commissioner had powers to declare and define the limits of the township.[157] This seems to have left the Buganda administration sadder and more continued to express disgruntlement. Kampala's boundaries were increasingly expanded to cover almost three miles radius from Nakasero Fort but not worth is that all these new boundaries included the Kibuga "mengo". When continuous protests of this were occurring, Sir Hesketh Bell noted that "due to the increased influx of labour into Kampala and the insanitary conditions in the Kibuga, this was a measure to right to be taken.

After the expiry of 4 years, some Baganda land owners that settled in the Southwest of Kampala agreed to sell some of their land to the protectorate government. The government was in desire or need of this land to construct a prison and barracks as a detaining facility for those proving stubborn. This was again protested by the mengo administration. As this was still outstanding, in 1916, another group of Baganda sold their land to the township authority for the construction of a police line, an Asian commentary and two oil storage tanks. This was followed by the declaration of Namirembe as part of the township in 1920[158]

Noteworthy is that, the boundaries of Kampala kept on changing. This was intended to widen the capital as a tacit means of handling the increased population and provision of services fit of a standard city/ Kibuga. When three acres on the slopes of Kibuli, south-east of the government station were purchased by the colonial administration, the boundaries stretched further.

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[157] Section 2 of the Uganda Township Ordinance.

[158] Monitor. Saturday, March 21, 2015. The Kibuga: Bugandas lost Capital. Available on https://monitor.co.ug

In a year later, the town planning made a report in which it recommended that areas like Nsabya, Namirembe, Mulago and Katwe be incorporated into the township authority.[159] The report further noted that the limits of jurisdiction should be extended to include certain portions of land at present outside the boundaries and native land in close proximity to the town should have their development brought under some form of control. However, this report was not so much supported by the provincial commissioner who rather recommended that Mulago and Makerere areas to be brought under the township authority, proposing that any further extension of the township should be to the East on the crown land.

As the British influence in the region increased, ordinances were made to govern the city (Kampala) but noteworthy is that these were later turned into laws such as the land law which barred non-Africans from owning land in Buganda. This land was only to be owned solely by the natives and the colonial offices on behalf of the Protectorate government. Thus, Kampala became such a firm city but in the heart of Buganda and on the protectorate, land purchased during administration but continuously claimed by Baganda. In depth, one would contribute the creation of Kampala to the protectorate government that laid foundation for its existence amidst contention from the Mengo administration that saw it as a defeat of their Mengo Kibuga.

Kampala after Independence

Settling on square miles of land in Buganda next to Buganda’s capital Mengo, Kampala was the capital city of Uganda at independence. Just like Rome, it was built on seven hills and to Ugandans each had its special significance.[160] Worth noting is that out of these seven hills, none of them held more significance than Mengo hill where a rambling brick palace on the peak is an

[159] A.E. Mirams.Town Planning and Development Report 1930.
[160] Uganda: The Battle of Mengo Hill. Friday, June3, 1966. Available on https://www.content.time.com.

object of universal awe. It is noted that not even the British could make a step to undermine its significance. It was where the Kabaka king of Buganda lived. Thus, in the heart of Kampala Mengo was of such a significant existence.

When the terms under which Uganda would become independent were being negotiated, Kampala being the capital of the new state was never disputed. Dr. Audrey Richards, in the forward to Peter C.W. Gutkinds book “The Royal Capital of Buganda: A Study of Internal Conflict and External Ambiguity” states that if it had been mooted to put the capital elsewhere, the Baganda would have been the first to protest. The situation of contiguous capitals and parallel control, therefore, continued after independence.

Article 125 of the Constitutional Report[161] stated quite unequivocally that Kampala itself shall be recognized as part of Buganda territory and the kabakas government should have a special association with its administration. The special association took the form of a Special Joint Advisory Council with three members appointed on the advice of the Uganda government, three on the advice of the Buganda government and three nominated by the Kampala municipal council. Thus, the Kampala or central ministers were obliged to consult the Joint Advisory Council on all matters affecting Kampala. After a while, there was a great expansion of the Kampala City boundaries in all directions to a radius of seven miles from the city center thus incorporating an area far larger than the original city.[162]

However, this was to stand until 1967 when Dr Milton Obote abolished the independence constitution and established himself as the executive president with Uganda becoming a Republic. Before independence, Buganda was granted semi-autonomous authority on 8th August 1962 and Uganda’s general independence the following day. Since Kampala was in Buganda and a more developed area than any other part of Uganda. It proved a challenge

[161] Uganda Constitutional Conference 1961.

[162] Joseph Bossa. Kampala Citys Troubles. Nov. 24th, 201 `112. Available on https://www.independent.co.ug

to Buganda as a kingdom and Uganda as a state that held Kampala as a capital city but located in Buganda.

When a clash happened between the Prime Minister, Dr Apollo Milton Obote and the president Fredrick Edward Muteesa II over the lost counties, Mengos misunderstandings with the central government increased. The trouble had been boiling up since February when Ugandas ambitious Prime minister deposed king Freddy as president and seized full powers for himself. Hardly had he declared himself president than he promulgated a new constitution giving Uganda a powerful central government and erasing most of Bugandas cherished autonomy.

This proved too much for Muteesa II. Declaring the new Constitution was nothing less than an act of secession from Uganda. He thus ordered Obote and his regime to transfer their government from Kampala to Lango. This marked the beginning of an attack on Mengo that saw Muteesa flee to exile. Shooting broke out in Kampala and bands of wild-eyed Baganda, shouting war cries and waving machetes overturned buses and trucks a major intersection. But as Kanyeihamba noted, this was all due to the 1962 Constitution which failed to distinguish the powers of the prime minister and the president thus the question of who had more powers led to the crisis.[163]

1900 Buganda Agreement: A check on Kampala

Historians agree that the 1900 agreement had a great influence or significance on the constitutionality of Uganda. Its existence though settled in history, is greatly felt in the 1995 Constitution. This constitution was promulgated by the NRA government after taking over power in 1986. Its preamble provided for an objective which was to attain economic stability and peace. Thus, in

[163] George William Kanyeihamba. Constitutional Law and Government in Uganda.

order for this to be achieved, firm administrative structures had to be established.

After independence, a misunderstanding had arisen between Mengo and administration and the central government of Obote on which side had more powers to control Kampala. As a capital city, it was located in Buganda but unknown to mengo administration; it was for the entire Uganda. This perhaps explains why Muteesa II ordered Obote to transfer his administration off Buganda soil and leave Buganda's capital Kampala which seemed important for Obote for all developments were high in Kampala and Buganda at large. Mengo claimed that all property including land on which Kampala settles was Bugandas land.

Thus, after coming to power in 1986, there was need to restrain Buganda's claims over Kampala if the central government was to effectively administer Uganda. There had to be adopted a mechanism that could check on the kingdoms claims over Kampala in Buganda. It could be done either by promoting a friendly relationship with the kingdom after its restoration or adopting other mechanisms but calm to that point. Whatever mechanisms were adopted has continued to increase a clash between the central government and the mengo government.

In 1995, the government disseminated a constitution with the provision on decentralization under **Article 176(2) (b)**[164] that acted shortly before the rebirth of the local government Act in 1997 which saw devolution as a form of decentralization transferred both political and administrative powers from the center to lower local councils not until the Kampala Capital City Authority Act of 2010 was approved that the administration went back to the central government.[165] The Act provided that the city was to compose of the technical and the political arm. The technical arm was to constitute the

[164] 1995 Constitution of Republic of Uganda as amended.

[165] Nabukeera Madinah. Recentralization of Kampala City Administration in Uganda: Implications for Top and Bottom Accountabiliy.

executive director's office and 10 other directorates whereas the political arm was to constitute the Lord Mayor and the divisional mayors. This was later to be complimented with the ministry of Kampala thus having minister of Kampala. Thus, Kampala has been fully put under the realms of the central government and Buganda cannot thus claim control over the capital. One would agree that Buganda would have claimed for a share of the revenue from the Kampala but this seems next to impossible apart from the kingdom claiming for rent from the central government.

The kingdom has always advocated for federalism a system that would see Kampala under the control of Buganda but this seems unlikely. Federalism would mean self-governing states working with the central government. Under federalism, Uganda's three active kingdoms and other areas would become states and, in the south, the kabaka would govern the state of Buganda including the capital city of Kampala but this, the government cannot entertain.[166] Thus despite its location on Buganda soils, the great capital has been put under the central government with strict laws that check on the kingdoms influence over the city as a mechanism of deviating from the nasty past history.

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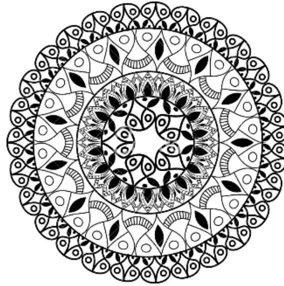
[166] Gwen Thompkins. Kingdom, Government clash in Uganda. February, 4th 2010. Available on https://www.npr.org

CHAPTER TEN



The Third Kabaka Crisis (The 2009 Kayunga Crisis, Burning of Kasubi Tombs, Kabakas Birthday)

As earlier noted, in the late 19th century, Buganda was a powerful East African kingdom running along the northwest shore of Lake Victoria in present day South-central Uganda.[167] The signing of the 1900 agreement not only reduced its influence in socio-economic and political spheres but rather granted it a degree of internal autonomy within the British-ruled Uganda protectorate. This agreement was later to be modified in 1955 in what history terms as 1955 Buganda Agreement. The new agreement resolved an impasse between the governor, who wanted Uganda to develop as unitary state and the kabaka who had wanted Buganda to become a separate entity to protect its identity. Thus, the two seemingly agreed to corporate where the Kabaka stood firm and offered to share tables with the governor and to secure the British protectorate, assist and guide himself, his people and dominions. Thus, their signatures were finally to appear on the end of the agreement.

[167] The Buganda Agreement, 1955. Library of Congress. Retrieved on 2nd July 2022. Available on https://www.loc.gov

The Baganda could not witness themselves being part of other regions and subject to the control of one person not a muganda. They enjoyed their supremacy without being subject to any regions control. How could their desires be taken into consideration by the leaders of Uganda had they accepted to be part of Uganda without clash? Their concerns were later to reflect in the countries journey of existence beginning from the day of independence. Thus, a series of cold war and clashes between the central government and the kingdom were to make bulletin headlines.

The first litmus test after independence was the 1966 Kabaka crisis. The immediate events that led to the crisis can be traced to the loss in the referendum on the lost counties in 1964. The lost counties were those which had been awarded to Buganda by the British for its support towards the subdue of Bunyoro. As Hancock observes, this loss was indeed very painful to the Baganda.[168]From then on words, Muteesa that doubled as kabaka of Buganda and president of Uganda began the hunt for allies outside against Obote who had signed the transfer of the counties back to Bunyoro. Among those obtained allies included Grace Ibingira, the UPC secretary general who was working on recruiting allies to join and penetrate the UPC with the aim of out voting Obote.

The increased enemy climate ended up with the overthrow of Muteesa II from office by Obote ending up declaring himself the executive president in 1967. Everyone seemed to have blamed Obote but none found fault in Muteesa. None saw wisdom in Obotes move. Muteesa had been at crossroads since independence. Being the kabaka of Buganda and president of Uganda required him to balance the interest of both sides especially in such situations. This seemed to be a hard nut for Muteesa. He could not front the interests of Uganda first at the expense of Buganda. This could a betrayal to his people.

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[168] Hancock, I.R. "The Buganda Crisis. 1964. African Affairs: Vol 69. Number 279, April 1970.

Thus, Obote did such a move to remedy the outcomes of such leadership. Thus, to Obote the prevention was better than cure.[169]

But this didn't solve what he desired to cure. Did this mean that the question of Buganda in Uganda had been settled by Obote when he decided to abolish kingdoms? The main conclusion is a no. Bugandas influence could not be dumped simply by abolition. Perhaps, one could say that Obote had indirectly opened the door of his exit. The Buganda's arge for semi-autonomous status could be reflected in a few years. Perhaps with his overthrow in 1971 by Amin who had hopes of support from the Baganda and later the support to NRA forces by the same group with the hope of having their monarchy restored.[170]

Its restoration though fenced by laws enshrined in the Constitution, these laws don't completely silence the ambitions of the kingdom but rather act as cobweb towards attaining the constitutional objectives. Thus, the question of Buganda in Uganda is one that is to be settled by technical means rather than by direct confrontation. Thus, Bugandas demands for autonomy is what has increased tension between Mengo administration and the central government. Though the fight seems silent, a series of events have made it loud. These have varied from the Kayunga crisis, burning of kasubi tombs, birthday cake and many others.

[169] Yoga Adhola. The Uganda Crisis, 1960: Should UPC apologise to Buganda or Should Buganda engage in serious introspection.
[170] Sagan. Eli. "At the dawn of tyranny." Alfred.A. Knopf, NewYork, 1985.

The Kayunga-Bugerere Kabaka crisis 2009

"We shall not give and allow Kabaka Mutebi into Kayunga a county area on the edge of his jurisdiction as a cultural leader"[171] Museveni remarked in a televised address to the nation.

Shockingly, both sides learnt nothing and forgot nothing from the history of the Pearl. The questions that emanate from the whole issue of the return of Buganda to prominence continue to haunt Uganda and Buganda partially. As usual, business was at a normal point in the country. Day for Buganda Youth Celebration was almost clocking. The Kabaka had portrayed interest in his ambition to celebrate the day from Bugerere a county of Buganda that settles in Kayunga District. Some members of the minority Banyara ethnic group led by a recently retired UPDF captain Kimezze declined the visit of the Kabaka alleging that he had to seek permission from them.[172]

Their idea was that the kabaka had no control over Bugerere and it seems quite clear that these people wanted to secede from Buganda. The history

[171] Museveni on a televised address. Javira Ssebwami. Ten years later! Recounting the 2009 Buganda riots that threatened NRM rule.
[172] Charles Juuko. Uganda: Banyara choose army officer as king. New Vision.

about the Banyara has it that they were as a result of intermarriages between the Baganda and the Banyoro supported by the British. Their history or origin is traced from the wars of Buganda against Bonyoro before 1900. Namuyonjo late king Kamurasis son rebelled against his father in 1800 and allied with the kabaka of Buganda king Mwanga II. Because Buganda was at loggerheads with Bonyoro, Mwanga welcomed him. As a token of appreciation, kabaka gave Namuyonjo control over the captured county of Bugerere which had been previously occupied by Bunyoro. But due to the flies known as "embwa", he didn't occupy the region not until the British flushed out flies.

The Banyara had no kingship. They were organized into clans' system led by the head of a clan. It's the clan heads who chose among themselves one person to lead them who was known as the "Omugabe" who represented the Banyara in Bunyoro. These Banyara are in three types. The "Bagele" who were under Bunyoro in Bugerere. The "Bagambayi" who came to Bugerere with Namuyonjo when Bugerere became part of Buganda and the last are the "Batumbugulu" that came to Bugerere long after Namuyonjo had overthrown Mukongo.

The Baganda found no convincing reason why the king had to seek permission in order to visit his region. Indeed, the long hidden silent conflict between the kingdom and the NRM government was to explode into a high intensified riot that saw many lose their lives and others facing imprisonment. On the 10th day of September 2009, the Katikiro of Buganda (prime minister of Buganda) Owek. J.B. Walusimbi was blocked by security from proceeding to Kayunga district to organize a "bulungi bwansi" function where the kabaka was to be the chief guest.[173]

According to the central government, the kabaka had not sought permission from the king of the Banyara, Major Baker Kimezze and this came at a time

[173] Amon Katungulu. Restoration of Kingdoms was a mistake Ugandans are paying for. Feb.14th 2019

when the president complained that the kabaka was not picking his calls and as well as NRM accusing Mengo of hosting mainly opposition politicians on CBS radio to undermine the government. The Baganda saw this as an attempt by the central government to undermine the institution of the kabakaship by sponsoring breakaway kingdoms.[174]

This simmering friction between the central government and the kingdom exploded into a bloody violence. The kabakas supporters took to the streets to protest the government action of undermining the kingship, they burned debris in the roads, blocking traffic and throwing rocks.[175]The mengo royalists opened battles with the military and it's said that a number of people around 40 of them lost lives. There were also targeted beatings by the loyalists to the people who looked like westerners because they could not sing the Buganda anthem or pronounce some Luganda words correctly like omufaliso (mattress).

Indeed, violence intensified in every part of Buganda. The government shut down the kingdoms radio station CBS and three others in a major clamp down. The riots spread to Kampala, Mukono, Mpigi, Kayunga and Masaka. On the night of September 12th 2009, the army occupied and surrounded the Kabakas palace in Kireka upon information that the Kabaka was determined to visit Bugerere come what may. Ideally it was hard to believe how a mere army serving military personnel in Uganda National Army could raise a claim to be the king of the Banyara. Surpringly, his claim was complicated by the fact that his own family disowned him and re-asserted that they were Baganda Buganda refused to recognize him as the king since they had various channels through which it recognizes the Banyara.

An emergency report from Buganda portrayed the long-hidden hatred between the two factions. In their report, the committee stated that the

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[174] "Kampala Hit by Renewed violence BBC news" Retrieved 25t May 2021. Also see www.news.bbc.co.uk.

[175] Uganda: Investigate 2009 Kampala Riots killings. Sept 10th 2010 find it on www.hrw.org

conflict was due to the government's intent to completely monopolise the oil and other mineral resources over the rights of the native communities that live on the ground. In their report, they claimed, they claimed that the Ugandan government strategy is to have complete political control over the land and minerals including weakening or usurpation of the claims made by native communities.[176]In their report, they stated that the government has proceeded to create by ceremonious recognition, claims to chieftaincy by any person no matter how remote in the region of Buganda and that once the claim is recognized, the eternally grateful chiefdom will then be more than willing to allow government access to its resources. To them this was intended to weaken the strong kingdom by the government as well as taking over Buganda's land for the benefit of the big fish in government. The violence was not to end until the meeting was held between kabaka and the president at state house Entebbe on condition that the Kabaka was to visit Bugerere upon complete end of the meeting.

Indeed, this was the first hostile test of the unachievable separation of culture from politics. Buganda was the centers for the independence of Uganda; its contribution is greatly recognized therefore its roots had been fixed in politics. It therefore seems hard to separate it from politics and a failure to maintain a balanced wheel was to escalate into increased misunderstandings between Buganda and the central government. The Baganda continued to demand for federal from the central government. But this has remained impossible since the central government is settled in the region of Buganda. No one can determine when the silent conflict may be culminated following other events then later occurred.

[176] Buganda Emergency Response Committee Friday, September 11th, 2009. Also find it at www.Buganda.com

The burning of Kasubi tombs

In the aftermath of the 2009 Bugerere crisis, another shocking event that weakened the Baganda was witnessed. On March 16th 2010 at around 8:30pm, the kasubi tombs were destroyed by fire.[177]As already noted, the event occurred during the awkward relationship between the central government of Uganda and the kingdom particularly in light of the September 2009 riots. These tombs have deep spiritual political and religious significances for the Baganda. They hold or act as the burial grounds for the kings of Buganda.

The burning of 128-year-old tombs was a crisis for the Baganda. Immediately, following the unfortunate fire at the tombs, Kampala city was a bound with questionable versions of the cause of the fire and some circles went on to speculate on the motive that the tombs had been set on fire by the government in a way of revenge following the 2009 riots. [178]President Museveni hurried to make a move on a national television and issued a stern

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[177] "Ugandas Kasubi Royal Tombs gutted by fire" BBC News 17th March 2020 . Retrieved 25th March 2021.

[178] Katende. R.B. Kasubi burning: The untold story: The Independent March 30, 2010.

warning to those maligning his government and accusing it of being behind the fire at the tombs. But this seems to have confused the natives the more as to who actually torched the tombs. Most of them started to object the president's submissions.

On the 17th of March 2010, when the president visited the tombs, riots sprung in Kampala and in Kasubi. The rioters were expressing their dissatisfaction with the fact that the president was behind the whole issue. Two people were shot dead by the security forces in trying to end the riot. Majority sustained injuries others were arrested.[179] In order to settle the matter, the kingdom called upon the masses to end the demonstrations. A commission of inquiry was set to investigate the fire outbreak which made a report that was handed over to the government in March 2011 but as of April 2012 it had not been released to the public[180]. The government promised funds to finance the reconstruction but it is not clear whether they were delivered following Buganda construction of the tombs basing on the funds raised through the famous "Ttofaali" a fund rising mission created by the kingdoms prime minister.

Buganda's relationship with the central government has been rising into soures though it is silent; it remains in words among the natives. It can be justified as to whether everything that occurs to Buganda is as a result of the move by the central government but that has remained the saying due to the conflict between the two majorly upheld by the natives of Buganda.

THE KABAKA 66TH BIRTHDAY- COFFIN CAKE DEBACLE

For a period of over 28 years of his reign on the throne, Ronald Muwenda Mutebi the king of Buganda had not missed out on any serious occasions of the kingdom such as opening of Buganda Parliament (Lukiiko), coronation

179 Fire burns Kasubi Royal Tombs again. Thursday July 25 2013. Daily Monitor.
180 Lubwama, Siraje.(15th April 2012) "Lawyers sue government over Kasubi Tombs Fire." The Observer (Uganda) Retrieved 25th May 2021.

anniversary, general community cleaning, opening and closing of Masaza cup and his birthday. Surprisingly, in March 2021, he was conspicuously absent at the closure of the annual Masaza cup final an event that was at St Mays Stadium Kitende.

He was represented by Katikiro Charles Peter Mayiga the kingdom premier who remarked that he was not to turn up reason being he had an urgent meeting with some visitors in Kenya. This increased the presumption that the rumor going around on social media that the Buganda monarch is critically ill might be true. The rumour had started in early September 2020 that the king had been poisoned and rushed to Kenya for treatment.

Due to the pressure from the natives, the kingdom rushed and released photos of the king with the president of Kenya Uhuru Kenyatta and former Prime Minister Raila Omolo Odinga.

Previously, when he appeared for the opening of the Lukiiko and the Masaza cup, the kabaka seemed not to be in a good condition. His facial skin had lightened a bit-probably a small pointer to a skin complication. When eventually he failed to light up as usual for the Masaza tournament closure, the rumour of his ill health gained more attraction and some online bloggers pronounced him dead something that put Buganda on Tenterhooks about their king.

On April 13th, 2021 the Kabaka arrived for his birthday at Mengo Palace. The occasion was graced by a few dignitaries including the vice president Mr. Edward Kiwanuka Ssekandi, the state minister for higher education, Mr. John Chrysestom Muyingo, Deputy Supreme Mufti Muhamood. This was notably his 66th birthday but surprisingly, he was presented before the Baganda in such a nasty health condition. Whoever saw him could draw one conclusion of conspiracy theories by the central government. It was in no doubt that the king Muwenda Mutebi was battling an ill health. He was

completely in bad shape health wise, something that raised uproar amongst his subjects.[181]

Many of the natives started allegations that he had been poisoned by the central government. [182] This was due to an audio of a woman identified as Princess Sarah Ndagire claiming to be a sister of Bugandas king Ronald Mutebi which shocked everyone. In this audio, she alleged that the king was poisoned by the state with the help of Buganda Prime Minister Charles Peter Mayiga. Following this, a lot of them were seen shading tears and others blamed the "Katikiro" for being an ally of the central government working towards the destruction of the kingdom which the prime minister rubbished. In his defense, he informed the public that the king had been battling allergies and was to get well. This was however rubbished by the populace who started to demand for his resignation[183].

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[181] Elijah Mutabuuza. Is the Kabaka Mutebi Ready to fly out of the country? Questions as king appears at supermarket. available on https://www.timesuganda.

[182] James Kabengwa. Stop Speculating about Kabakas health-Mengo. Daily Monitor. Retrieved on 25th May 2021

[183] The Bridge. Too many unanswered questions as Kabaka Appears in Public sick and frail. April 14th 2021 by Sourced. Many started to throw postes infront of Mengo palace demanding for the resignation of the Prime Minister Charles Peter Mayiga which he declined.

THE BIRTHDAY COFFIN CAKE SAGA.

The dismaying appearance to his subjects was furthered by the controversies around the cake that arose about its shape that was coffin like in nature and its color as well. This cake raked mostly negative reviews on social media as some complained about the color of choice which was deemed to have political connotations. This cake was made in a rectangular shape with yellow decorations something that left many commentators questioning about this color choice. It painted a certain picture in the view of many that indeed it was a political move.

In his defence about the cake, Kenneth Nsibambi the baker came out to clarify on this cake amidst rising threats from the Baganda about this theorem that had been adopted where he stated that he only followed the specifications provided by the organizers. "It's not the baker that decides on the color and shape of the kabakas birthday cake. The Royal family does and this time round that was the shape and color that was preferred. Sorry for all those that have been negatively affected long live the king of Buganda."[184]No

[184] Nsibambi while explaining about the coffin like cake tainted with yellow.

one best understands why this was opted for though some speculate that it was a political move adopted by the kingdom to insinuate violence.

Most of the Baganda raised eyebrows concerning their kabakas birthday cake. They connected the dots to the already mysterious health whereabouts of their ruler. They had taken long since they last saw the king in public and when they finally set focus on him, he was in an ill condition that did not attract attention. There were reports developed that the kabaka was in and out for months treating throat cancer whereas other unconfirmed reports suggested that he was poisoned.[185]

This had come in a period of political tension that was created by the 2021 general elections where NRM has won but with a defeat in Buganda. NRM had lost most of the Parliamentary seats that saw NUP win in the great divisions of Buganda. Misunderstandings had developed between NRM and Buganda where most of the officials in the party were blaming their defeat to the kingdom claiming that it had sidelined with NUP and religious leaders to defeat NRM.

But nonetheless, this view cannot be undermined for Buganda has for long demanded for its property that is in possession of the central government and it had proven beyond doubt that the NRM government could not raise its eyebrows to witness Buganda's demands. Perhaps this underlines the untold truth in NRM assertions.

It's for this reason that the kingdom hides behind few oppositions' political parties in the struggle against Musevenis government in the view that upon success, Buganda can revive and receive its property. When this fails, many times Buganda continued to raise its voice to the elected MPs of Buganda region to demand for its property and work on its demands.

[185] Baron Kironde. I was ordered by the Kingdom. Kabaka Mutebis "CASKET" birthday cake maker Nsibambi. "Makes some things clear" Grapevines Uganda News.

Because of this tension and internal feud between the kingdom and the central government, many spectators of the birthday believed that perhaps the kabaka might have been poisoned by the government as a move to weaken the kingdom. The kingdom had gone through a lot ever since it started to raise demand for its property. In 2009, there were riots that were spearheaded by the central government where it deployed heavy security machinery to block the kabaka and Katikiro from heading to Bugerere.

These riots led to loss of lives and destruction of property. Many Baganda vowed not to support the central government for this seemed to be an insult to the kabaka. In 2010, when the “Masiro” “kasubi tombs” were torched to flames, the Baganda pointed this blame to the central government claiming that it was responsible for this. Though the president warned about such allegations, the Baganda were still not convinced.

Ideally, no one up to now can vehemently explain the reasoning behind the presentation of the Buganda king for his birthday in such a condition. They had demanded that the king should say something to the people having heard rumours that went viral on social media that the kabaka had passed on. When he was traced in Kenya, the royal family including the Katikiro alleged that he had gone to Kenya to meet the president Kenyatta over certain matters. Reports from unclear sources stated that he had been taken for treatment.

Thus, one can arguably conclude that the clashes between the central government and mengo administration may not cease due to the increased differences between the two factions despite the continuous call for unity among them. The Baganda seem to be serious on the matter of achieving federalism in Uganda which idea does not manifest in the programs of NRM government. It is now clear that the kingdom cannot be separated from politics as it eyes the Buganda politicians as its own way for achieving federalism.

The Federo Question Of Buganda

Federal is a system of governance. It is not about getting rid of the Central Government. It is not about party politics. It is not about multi-partism or absence of it. It is not about religious differences. It is not about tribalism. It is not for the benefit of Buganda alone. It is not about monarchism. It is not about land or dispossessing people from land. It is not about supremacy of one region over another or others

Federalism is about providing more prosperity, more wealth, more feeling of belonging and participation in governance by marginalized and non-marginalized people. The Federal system of government minimises possibilities of waging war against the Central Government. It minimises internal acts of terrorism and discontent against the Central Government.

It has inbuilt safeguards that ensure uniform growth for all the regions of the country, and additional measures to make sure that marginalized or less developed regions of the country can catch up, through the system of equalisation grants and affirmative action programmes. These ensure that regions with greater income and development contribute a pre-agreed percentage of their earnings to the development of areas, which may be less developed.

It should be noted that Federalism, though different from Decentralisation, **does not** contradict or exclude Decentralisation. The two systems can and should co-exist and complement each other, at the regional level. Advocating federal does not mean or seek to get rid of decentralisation from the regional tier. Nor does it mean getting rid of District MPs, LCs leaders or other local government officials.

Distinguishing Federo From Federalism

The words *federal* and federalism are not synonymous. Federalism as understood in political science is a system of governance in which powerand

responsibilities are divided between the central government and the various regional governments that comprise the sovereign state.[186] Under this system of governance, the regional governments are not merely regional representatives of the federal government, but they exercise independent Buganda has been unrelenting in its quest for federo, which essentially amounts to a demand for greater autonomy in order to run its own affairs, free from the over-challenging control of the central government and although some regimes have tended to suffocate this demand, it has persistently resurfaced.[187]

Essentially speaking, it's a challenge to front federal arrangements in Uganda before 1894, the underlying idea here is that during those times, there were a variety of kingdoms in the territory in essence with each having its own right independent of the other kingdoms. But it's rooted from the British colonial policy of indirect rule. Under this system of governance, the British could use Buganda local chiefs in particular and Buganda kingdom at large to administer other regions. This was so because Buganda had a well-organized structure. In return for its collaboration with the imperialists in extending their rule, Buganda was to be awarded handsomely by the British. Britain thus rewarded Buganda by allowing it to retain its significant degree of self-governance from the 1900 Buganda agreement to 1962 independence Constitution.[188]

Perhaps the easiest way to understand and to explain the Federal system of governance is to set out the most commonly asked questions and misconceptions about the System. Responding to these questions and concerns will effectively clarify why the people of Buganda and the people of Uganda generally desire a federal system of Government.

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[186] Federalism is a concept derived from a Latin word *foedus* meaning 'pact', 'covenant' or 'agreement.'
[187] Naluwairo, N & Bakayana, I. Bugandas Quest for federo and the right to self-determination. A Reassessment. HURIPEC Working Paper No17 of 2007
[188] GoU:2003

It is important to answer these questions by referring to our history and experience with the Federal System of government in order to ensure that we learn from our past mistakes.

In the most basic sense, **"Federalism"** is a national system of governance in a country with one Central Government for the entire country and several regional governments.

The Central Government has control over national matters like defence, citizenship, foreign relations, telecommunication, electricity, inter-region highways, dams, rail networks, airports, national monuments and natural resources and other such overall national policies.

The regional governments take care of regional matters in the particular regions like schools, health services, feeder roads, culture, land, local services, local government, local development plans, local economic policy etc.

The primary philosophy under this system is that it is the people in the various regions of the country who are best suited to determine affairs of that region. The regional governments are given **autonomy** to decide their regional affairs themselves on the terms that best suit them.

From the very foundation of the Country, Uganda was a federation of the Kingdom states of Ankole, Buganda, Bunyoro, Toro, the Territory of Busoga and the other non-kingdom states that make up the rest of Uganda.

Each of the Kingdom States entered into an independent Protection Agreement with the British Colonial Government **to give up their respective independence and join a new federal state known as Uganda,** on terms spelt out in the respective Protection Agreements. In the case of Buganda, this was under the 1900 Buganda Agreement.

It was under these Agreements that the very diverse and culturally different peoples in Uganda came together as one nation known as Uganda.

The relationship between the various kingdoms and the colonial government, under these arrangements, each kingdom state remained in the Union of Uganda upon the terms and conditions set out in its particular agreement. The powers and duties of the respective states, as well as the powers and duties of the Colonial Central Government were properly addressed in these Agreements and the two institutions worked well together.

This arrangement continued throughout the colonial times until the Protection Agreements expired on 8th October 1962, at independence.

Even at Independence, both the British Government as well as the pre-Independence Ugandan leaders recognised that it was important for the people of Uganda as a whole to continue being together as one nation group known as Uganda that can meaningfully pursue national objectives and aspirations on the world stage.

But at the same time, they also realised the inevitable truism: that the people who made up this nation-state of Uganda were people from different cultural and historical backgrounds, with varying cultural and social needs, aspirations and traditions.

Amidst these differences, a compromise position emerged, at the Lancaster Conference, in the form of a Federal System of Government. This Federal System permitted the various Kingdoms and non-kingdom states to continue following their traditional ways of life and fulfil their cultural and social obligations and aspirations, within the umbrella system of one nation that pursued national objectives and goals. After 1955, the Kabaka became a non-political monarch.

At independence, the system of Government, arrived at by agreement of all parts of Uganda, was embodied in a document known as the 1962 Constitution. During the colonial period, Uganda had organised into various Kingdom States and districts of peoples with relatively homogeneous ethnic backgrounds. The philosophy was that people should be grouped together

into viable regional units, with each unit being made up of people who shared the same traditions, history, language, culture and traditional beliefs.

In the case of non–Kingdom state areas of Uganda, the system of Administration divided the nation into large district groups, with each district large enough to encompass whole ethnic groups with the above characteristics. There were very few exceptions to this general rule.

The colonial districts were much larger and more economically viable units than the current fragmented mostly unviable districts. Many of these colonial districts were governed directly from the center and did not benefit from the federal system. Although these areas were negatively impacted by being administered from the center, the colonial government mitigated their lack of benefits of full Federal by grouping and administering them through "quasi federal", large and economically viable regional blocks named Northern Region, Eastern Region and Western Region.

How federal regions administer During the colonial period, the various states and districts were administered through their traditional leaders and cultural institutions where these existed. For example, under the 1900 Buganda Agreement, the Kingdom of Buganda remained a Kingdom as a whole, and was administered through the Kabaka (King), the Katikkiro (Prime Minister), the Abakungu (Ministers), the Lukiiko (Parliament), and the local government administrative structure from the Masaza to Batongole. Similar arrangements worked with the rest of Uganda.

Under the 1962 Constitution, a semi-federal system of government was recommended by the Munster Commission and under its recommendation, Buganda was the only federal kingdom and other kingdoms or areas such as Busoga were granted a semi-federal status.[189]Thus under such format of administration, Buganda enjoyed distinct powers from other regions. These among others included the power or mandate to rise own tax revenue, pass laws on specified subjects, enjoy entrenched protection for land tenure and

[189] Article 2 f the 1962 Independence Constitution.

its local courts. However, this Constitution is blamed for not laying out a clear frame work on which other semi-federal areas were to operate as the case was with Buganda.

Thus, the political debate surrounding federalism colloquially referred to as federo in Buganda has been one of the fiercest in Uganda, stretching from the period of British Colonialism into and through the post-independence regimes and continuing even now.[190] At the height of colonialism, semi-federal status of administration was left in their colony Uganda. This was to last from 1962 to 1967 when the then prime-minister Dr Apollo Milton Obote overturned the independence Constitutional grounds and overthrow the president and the 1967 Constitution placing excessive powers into executive with him as the executive president.

While Obote made a number of political mistakes during his rule, his ruthless attack on the Lubiri royal compound that led to Kabaka Muteesa IIs exile in Britain was not only the height of political miscalculation, but also heralded an era of incessant political conflict between the central government and the kingdom of Buganda.[191] It's in no doubt that the kingdom was granted and recognized by the quasi federal 1962 Constitution. Thus, its demand and agitation for federalism is not linked on a bare ground of baseless argument but a constitutional establishment as of 1962.

This federal and semi-federal arrangement was maintained by the 1962 constitution. The way the ideas of Federalisim of Government in Uganda started to tanish. In 1966, the Kabaka's palace was invaded by the Central Government and the Kabaka was forced into exile. Uganda's federal system was unilaterally abolished in contravention of the pre-agreed 1962 Constitution. This was done without any consultation or consent of the people of Uganda.

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[190]Yasin Olum. The Federal question in Uganda. Friedrich-Ebert-Stiftung.
[191] Ibid

In 1967, a new constitution was put in place that abolished federal arrangements all over Uganda. This Constitution also unilaterally abolished the institutions of traditional and cultural leaders in Uganda.

Various reasons can be advanced for the forceful overthrow of the system, but the most important one was simply the clash between the two leaders of the time.

Evidence of the fact that it was this clash and not the failure of the Federal System, can be found in the speech made by Prime Minister Milton Obote to the National Parliament on 30th June, 1966. This speech is reported in the Parliamentary Debates (Hansard), 1st Session, 1966-67, 2nd Series, volume 63, from pages 529 onwards. At page 534, Hansard reports, in Obote's own words that ***"the cause of the trouble is the ambitions of Sir Edward Muteesa and nothing more".***

Furthermore, although Obote invaded the Palace in 1966, when he introduced his pigeonhole Constitution in April 1966, he did not, under that Constitution, abolish the Federal system of government for Uganda. Instead, he engaged in dialogue with the Buganda leadership to find out whether they would install another prince as the Kabaka.

It was only after Buganda refused to have any other Kabaka but Mutesa II, that Obote decided in May 1967 (over a year later), to abolish the federal system and to rule the whole country from the centre. This he did by introducing the 1967 Constitution, under which re renamed Uganda a Republic.

The clash between the two leaders was exacerbated by the problems inevitably caused when a new position of Head of State (a political role) was created in 1964. A king, who was the head of his own regional Kingdom, occupied this new contradictory position of the national Head of State.

The merger of traditional leadership of a Kingdom and political leadership of the whole Nation, led to an inevitable clash between the two institutions, as

well as between the President and Prime Minister. Lessons must obviously be drawn from this experience.

The Federal system that had worked well throughout the colonial period and in the early years after independence thus came to an end.

From that overthrow of the Federal system, Uganda as a nation state began its journey of steady decline for over two decades, with unprecedented terror, tyranny, lawlessness, infamy and rogue-state status around the world.

The National Resistance Movement resolved to fight this tyranny and went to the bush to return peace, democracy and prosperity to Uganda. This liberation war was fully and actively supported by the Kabaka and the people of Buganda, as well as very many people elsewhere in the Country. Many, in Luwero and elsewhere, lost their lives for this cause.

Upon coming to power in 1986, the government adopted a system of local government that was much made fundamental in 1997 with the adoption of local government Act. This was rooted in the principle of democracy that the NRA forces adopted in the 10 points programmes. This was first adopted through the RCs and later turned into local governments. After his swearing in, Museveni embarked on a number of populist reforms as enshrined in the NRM ten points programme. One can argue that one of the fundamental policies was the grassroot structure known as the participant structure (Resistance Councils) (RCs). This was intended to motivate and encourage participation of the people in administration.

These Resistance Councils were hierarchical in nature ranking from RC5, RC4, RC3, RC2 and RC1. These were later turned into local councils (LCs) in 1993. This saw RC1 forming the village Council, Parish Council (RC2), Sub County Council (RC3), County Council (RC4) and District Council (RC5). These were later to influence democratic ideas in Uganda as well as rebuilding trust in the young NRM government. They were ideally a gear towards the achievement of a fundamental change.

The critical point of observance is that members of the village councils were directly elected by citizens at the grassroot levels while those in other councils indirectly elected.[192] It reduced doubt and attracted applause from the international community that praised Museveni and his war comrades. He was at one time ranked among the new breed of African leaders by US Secretary of State Madeline Albright.[193] The adoption of RCs increased a reflection of hope for the future. They were a mirror indeed and helped to rebuild the administrative structure of the collapsed state as they provided democratic climate for the citizens to actively participate in public decision making.[194] Thus the populist reform that followed this was the adoption of decentralization of power to local governments, election of people's representatives to the national legislature, affirmative action for women and the other categories of marginalized groups. These have indeed remained in existence being protected and availed to them by the Constitution.[195]

But to Mengo establishment, this system was intended to blind fold the eyes of the masses with a federal status where power was decentralized from the central government to local governments. But unfortunately, the system was not completely left to accelerate as it was meant to live. The central government continuously exercised excessive powers and the system was infiltrated by politics from the central government thus becoming a failure.

In early 2000, the restoration of the cultural leaders and traditional institutions had been partially achieved with mass support to the regime from the populace. The activities of these kingdoms had been hanged by Obote in 1966 thus their affairs filled with cobweb. Upon their reinstoration, majority of them were dusted off and in the blink of an eye, the agitation of their independence authority and privileges formed the bulletin headlines. Mostly

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[192] Villadsen and Lubanga (1996).

[193] William Muhumuza. From Fundamental Change to No Change. NRM and Democratization in Uganda 2009.

[194] Ddungu (1989)

[195] Article 32,33 and 34 of the 1995 Constitution of the Republic of Uganda.

among these was Buganda. With its influence and contribution towards Uganda's independence and NRAs retaining of power, Buganda felt like it had not been awarded well without federalism.

The pursuit for this federal status topped the list for its demands after reinstoration. Thus the relationship between the central government under President Yoweri Museveni's National Resistance Movement (NRM) and the Mengo establishment led by Ronald Muwenda Mutebi, attested to the gravity of the political sensitivity and impasse over federalism. The worst aspect of the inability to resolve the federo question has been the manner in which different individuals and groups have taken advantage of the impasse to gain political advantage by either agitating for or against it. Thus, leaving it in abeyance and volatile.

Museveni once remarked, "The NRM government would not grant federalism to any part of Uganda, and parliament should consider a bill on traditional rulers that would prohibit traditional leaders from engaging in active and partisan politics and to pass it before the general elections scheduled for February 2001."[196] Apart from political and other interests, nothing could block the desire for federalism. According to a Constitutional amending process survey of 1993- 1994, 65 percent of the general populace in their response to the Constitutional Review Commission (CRC) had an affirmative stand on the adoption of Federalism.[197] To worsen this, in Buganda, 95 percent of them were in favour of federalism. Further a Constitutional Review Report of 1993 stated that 3770 memoranda submitted in support of federalism and 2002 in support of a unitary system.[198] Regardless of this, despite their majority position and stand, the NRA government ignored their views and argued that Ugandans that fronted

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[196] Sunday Vision 7, Sept 2009

[197] Constitutional Review Commission Report 2005

[198] The Constitutional Review Commission under the chairmanship of Professor Fredrick Ssempebwa, was charged with reviewing the Constitution.

federalism were only to attain it through decentralization. Thus the 1995 Constitution was to exhibit decentralization than federalism under Chapter eleven starting with Article 176 of the Constitution. This provision states in part that, "subject to Article 178, the system of local government in Uganda shall be based on the district as a unit under which there shall be such local governments and administrative units as Parliament may, by law prescribe."[199] This was to be harmonized with Article 5 which provided for the various regions of Uganda including Districts and lastly the government restored the kingdoms as constitutional monarchs and cultural institutions through the Traditional Rulers Restitution of Assets and Properties Act which did not resolve the question of federalism.

In 2001, an editorial was published with contained views of the Lukiiko about federalism and its steps towards achievement which in part read. "The Buganda Lukiiko [Parliament] is going to petition the Constitutional Review Commission to adopt a federal system for the whole country. The Lukiikos stand is just a variation of its long-running for Buganda to be granted a federal status, as was the 1962 Constitution. The lobby has now realized that the Buganda alone approach cannot work and is looking to disguise their self-centered aspirations in a supposedly wider setting. Nobody should be deceived, for these individuals have not suddenly become magnanimous. For a start, no other region or group is advocating for federal structure, partly because they view it as a ploy for supremacy by individuals purporting to represent a community and also because historically reality has shown it not to be viable. The federal advocates argue that their system would take power and resources down to the grassroots. On the contrary, the federal government in Uganda context would actually be centralizing authority and resources in Buganda's case, these would go to the Lukiiko and its acolytes."[200] A similar editorial on federalism was published and released in the daily monitor of September 2001 which noted that;

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[199] 1995 Constitution of Republic of Uganda as amended.

[200] Old Flawed Argument, New Vision, 26. September 2001.

The demand for federo is gathering steam again as the Constitutional Review Commission (CRC) continues to work on what now looks set to be radical proposals to amend the 1995 Constitution. Buganda's unrelenting pursuit for federo is ironic and instructive in many ways. Nationwide, the idea of federo doesn't have a lot of support, although attitudes are changing in favor of it in parts of the north that have nothing but war and poverty over the last 15 years. Part of Buganda's agitation for federo is born out of a sense of betrayal. Buganda feels that it paid the highest price for the rise of President Yoweri Museveni and the movement to power but the region has not benefited much in the post 1986 period."[201]

Thus, in a bid to check on this, NRM decided to adopt the divide and rule system. Under this system the government continued to create and enthrone cultural leaders that never have existed and empowered them by greatly rallying behind them. In a much clearer example was the instauration of Baker Kimezze as a king of the Banyara. This group of persons was under the control of Buganda kingdom in Bugerere a county of Buganda in Kayunga district. Lt Baker Kimezze was elected as a leader to replace his father Nathan Mpagi who had died of diabetic complications a day after his coronation ceremony was called off over disagreements on his lineage. [202]

This was objected to by the Mengo government and in 2009; the unfortunate incident of the kabaka visit to Bugerere that saw a three-day riot was a manifest expression of the central government's intention of reducing Buganda's strength as a mechanism of weakening it. This was after the central government insisted that the Banyara a small ethnic group living in Kayunga, be consulted by the mengo establishment before the visit. The Mengo establishment leaders saw the emergence of the Banyara within Buganda as a creation of the central government intended to cause division amongst people

[201] "Buganda Cannot Get Federal." Daily Monitor 26 sept 2001

[202] Charles Jjuuko. Buganda: Banyala Choose Army officer as King. New Vision 12, August 2008.

who had lived peacefully in Buganda and owed allegiance to the kabaka. In a furthered argument, Buganda stated that the NRM government sought to weaken the kingdom by fragmenting it into smaller geographical entities, which in the long run could have deleterious effects on the demand for federalism. A continuous form of physical and cold engagements for federalism between the kingdom and central government have been witnessed including the support of opposition candidates in general elections by Buganda kingdom as a mechanism of adopting federalism which fulfills its intentions. Thus, the kingdom has continuously fought a spirited tussle with Musevenis government demonstrating its resilience to stand the heat of controversy without flip flopping and reneging on its alliances in the face of state resistance.

Would the Federal System of Government work in Uganda?

Yes. It must be recognised that Uganda is made up various different groups of people with diverse backgrounds and cultures. We must also acknowledge a reality that the majority of our people are rural and unsophisticated. They live and practice their traditional ways of life.

It must also be acknowledged that, just like in the United States, different regions of Uganda have different problems. For example, the people of Soroti District have to contend with violent cattle rustling which results in terrible loss of life and property. Those in Gulu live under fear of frequent rebel raids. Eastern Uganda has had droughts. Karamoja and parts of Ankole badly need valley dams, Hoima has no tarmac roads while Kalangala wants a reliable ferry. The list of unique local needs and priorities that are often ignored by the centre, is endless.

The people in Soroti feel that cattle rustling is their priority problem, yet those in Gulu believe the rebel war is the most important thing. The decision makers in Kampala may not know how to solve these problems and may not see these problems as priority matters.

The people in these regions need to be given an opportunity to decide on their priorities.

The will of the people on the question of the federal system of Government was tested by the **Odoki Constitutional Commission**. The results of the views collected by that Commission showed that the Federal System of Government was very popular not only in Buganda, but also in Uganda as a whole.

Sixty Five Percent (65%) of the all the people of Uganda and **Ninety Seven Percent (97%) of the people of Buganda wanted this system of Government.**

The investigations, research and interviews carried out by the Buganda Constitutional Commission have confirmed that the views of the people of Buganda and Uganda on this matter have not changed.

The 1995 Constitution of Uganda instead introduced another system of Government known as Decentralisation. Under this system, Uganda is currently divided into 56 small districts, some with only a few thousand people.

Decentralization: Under a Decentralised system of government, functions, power and responsibility is ***delegated*** to lower units. The delegated power or responsibility can be unilaterally un-delegated any time, either by administrative directive or by amendment of the laws or even of the Constitution itself.

The delegation and its extent are at the discretion of the Central Government and institutions of the day. In other words, the local governments and districts are really just **agents of** the Central Government. Under this system the delegated powers can be taken away anytime.

Federalism: The Federal system of government is a ***binding contract*** between the Central Government and the Federal states. Under

that agreement, the parties agree on the extent of sharing responsibilities, powers, functions and resources. This agreement cannot be changed by one party without the consent of the other affected parties.

Under Federalism, decisions that affect particular regions are made at regional level by the particular region affected. The Central Government makes decisions that affect the entire country. This is not an agency relationship. Decisions affecting a region are decided upon directly by the people of that region (and not the Central Government).

In the Decentralised model, decisions are made by the Central Government and accountability is to the Central Government.

Under the Federal arrangements, the decision-making process of day-to-day affairs that affect a particular region are made locally in that region, and regional accountability is to the people of that region.

Funds or percentages of funds to which a federal state is entitled or which the Central Government is bound to give the Federal state are pre-determined and cannot be unilaterally changed. So are methods of raising revenue.

Is the federal system better than the Decentralisation system?

Yes. The Federal system between the Central Government and regional governments has numerous advantages over the current system of decentralisation. Decentralisation works well from the regional level downwards. However, it does not work effectively from the national or Central Government level to the village level.

The Uganda Decentralisation system is based on tiny un-viable political units. The district system is not a viable political, economic or social unit. It is too small to be capable of making useful strides in national development. This is over – decentralisation. Decentralisation should start at a regional level.

Today, Uganda has 56 districts, each with its own policies and administrative structures. But can the district of Kalangala for example, set up a university? Can Moroto district set up a regional referral hospital? Can a small unit like a district build an effective road? Any single district may not be able to mobilise the funding or manpower to undertake such necessary but large projects. Yet the Central Government cannot do all these things effectively for all the regions in Uganda.

The Federal system of Government proposes viable regional blocks, that consist of several districts where people of the same or similar problems, cultures, languages and traditional ways of life can devise regional strategies to solve regional problems. A region of districts with similar aspirations has the capacity to undertake such development projects within the region.

It is this kind of co-operation that is likely to lead to regional universities, regional road systems, and regional policies on matters like health, education, agriculture and economic development plans. After these regional plans and policies have been developed, then decentralisation can be applied at the regional level to implement them.

A federal system of government allows the people to share with the central government the responsibility of planning, executing and reviewing development proposals. Under the decentralisation system, all planning, and budgeting is the responsibility of the Central Government and accountability goes to the Central Government. For example, under the current Decentralised system, the people of West Nile region do not participate in the decision-making process of the Ministry of Finance. The Minister of Finance, sitting in Kampala, will dictate to the people of West Nile Region how much money they will get in Financial Year X, and how they are going to spend it, and they must account for it to him.

Under the Federal model, the regions themselves decide these affairs. The Federal model brings the decision-making process closer to the people. Supposing the people of West Nile region produce tobacco worth Shs. 90

billion a year. All this money goes to the Central Government. Then the Central Government, sitting in Kampala, not only decides that Shs. 15 billion should go back to West Nile, but also decides on how it should be spent. How can a minister, and his bureaucrats, sitting in Kampala realistically know what the people in West Nile actually want? Is it a surprise that in the year 2001, West Nile region does not have electricity? Without electricity, how is it expected to build factories and industries so that it can create employment and generate wealth?

In this example, the decentralisation system is flawed on two fronts. First, it depends on the whim of the minister in Kampala, whether this year they will get back, Shs. 2, 5, or 10 billion, irrespective of what they produce. Under the federal arrangement, the people will be entitled to a minimum pre-agreed percentage, which will then be topped up by the equalisation grants discussed below.

The second flaw with decentralisation is that the Central Government decides what this money should be used on. If the people of West Nile had been allowed to decide on the priority of their expenditure, they would now probably have electricity and factories. West Nile is but one example of what is true to most of Uganda's regions. The Central Government is too far removed from the villages to be able to make effective and proper decisions for every corner of the country on how money should be spent. The regional governments under the federal system are closer to the people and can make more informed judgments.

Under decentralisation, virtually all appointments to regional jobs (apart from locally elected representatives) are made in Kampala. Under the Federal system appointments are made locally by the region, giving a chance to local people to serve their regions, and accountability is done by local people to the local region itself. This has potential for reducing corruption.

The Federal system of Government devolves seats of power and brings them closer to the people and minimises undue dependence on the Central

Government for every aspect of development. Since the abolition of the Federal system of government in Uganda, the country has been engaged in constant struggles for power. In a space of only 40 years, we have had no less than six violent overthrows of governments and endless wars. This is because the only seat of power in the country is in Kampala. We have also seen politics of cronyism, with changing regimes and leaders surrounded by "yes men" seeking political favours. Under the Federal model, some of the power base will shift to regional levels and is likely to reduce on the pressures our history has shown of people fighting for power and jobs in the Central Government.

Professor Ali Mazrui, in his presentation, **"The Nation"** in February 1998, argues strongly that the federal system of government is a solution to ethnic problems of African countries and its denial has caused plenty of bloodshed. He writes:

"What has been remarkable since independence has been, loosely, Africa's reluctance to seriously consider federal as a solution to its tumultuous ethnic upheavals.... Indeed, Africa worked itself up into a condition of acute psychological denial. Loyalty to tribe was regarded as political pathology ... ignoring the salience of ethnic loyalties has cost Africa three to four million lives in civil conflicts since independence. On the other hand, some of the countries which have attempted to make concessions to those loyalties have reduced risks."

Big federal regional blocks have a stabilising and balancing influence over a potentially despotic Central Government. Constitutional review should not be based on personalities or the government of the day. The fact that government today may be occupied by decent leadership should not blind us to the fact that some day there may be a possibility of a corrupt or despotic leadership or a decidedly anti-people dictator. This is what we should guard against. We neither should wait for this to happen and then act nor should we be amending the Constitution every five years. We should give it staying power. A federal arrangement is one way of ensuring this.

Unlike the system of fragmented decentralisation, the regional Federal system of government takes advantage of the social and cultural factors that bring people together in particular regions of the country to achieve uniform regional development. Recognising these systems and taking advantage of them can lead to national development more effectively and efficiently on a regional basis than can the arbitrary unviable district units set up under decentralisation.

The Federal System can be compared to the growth of radio in Uganda. For several decades, Radio Uganda was the only radio station in the Country. As is usually the case in Uganda when something new is suggested, "stakeholders" in the status quo and among prophets of doom loudly expressed fears that private radio stations would jeopardise national security and even aid and abet coup plotters! At the same time, many Ugandans often complained that issues they cared about were not adequately covered by Radio Uganda. Many longed-for programmes in their local languages.

Since the advent of FM Stations in late 1992, there has never been a coup or the threat of one. Instead, FM stations have helped the different peoples of Uganda to have their unique cultures to be handled in their own languages and in their own regions. That helps explain the tremendous growth and popularity of FM Stations around the country (now over 40).

Federalism is like the FM stations, where today virtually each area has an FM station in its local language. Everyone is happy in diversity and plenty.

Federalism lends stability to the central government: Previously, a coup plotter, who only had to take over Radio Uganda in order to take over government, would now find it very difficult to convince each one of the forty FM stations to carry his message. The same goes for convincing all regional governments to lend support in case of a coup attempt.

The Federal system allows the various people of Uganda to celebrate their diversity under a united Government**.** The various ethnic groups in Uganda each have their unique customs and traditions. A sound nation and society

can only be built on the preservation of our respective cultures, instead of eroding them, and leaving a vacuum. Regional federation of similar people of Uganda will advance our cultural heritage and will take advantage of our traditional systems of government and cultures to achieve development. This will enable us to develop our history, languages, regional identities, morality, traditions, and character among our people.

Buganda doesn't want to return to the 1962 Federal system A Federal system has to be based upon the peculiar, social and economic circumstances pertaining to the particular country. The times and development of the societies also make a difference. A federal system that was suitable in 1962 certainly needs modifications to make it work in the year 2000. This is because every federal system has to be adjusted to meet the times. Other countries do this by periodic amendment of the Constitution, but the amendment has to be agreed upon by all the affected parties.

An example of necessary amendments to the 1962 Federal Arrangement is the scope of its application. Under the 1962 arrangement, federal status was only granted to the Kingdom states of Uganda and even these kingdoms had varying federal rights. The rest of Uganda had a unitary system. This was a recipe for envy, possible hatred and created an imbalance that cannot be sustained today. Every region in Uganda should have the right to pursue federal status and every federal region of Uganda should enjoy the same rights and privileges as the other federal regions in the country.

A federal system of government should divide the country into regions, with the division taking into account the principle that people of the same or similar traditions, cultures, languages and ways of life are put together to take into account and take advantage of their traditional systems of leadership, mobilisation and way of life for development. In the case of the people of Buganda, the districts of Buganda would form the federal Kingdom of Buganda under a non- political Kabaka.

In regions where a Federal system of government based upon similar languages, cultures and traditions is not feasible, the people of those regions should be free to come up with their own federal system of governance in accordance to their needs and circumstances.

Buganda objects to the Charter and Charter arrangements because they are just an extension to the ineffective decentralised system.

Because we believe that the federal arrangement is the best way for all parts of Uganda to develop, all of Uganda should be governed under a federal arrangement. In the event that a region does not desire federal status or desires a unitary system of government with the Central Government, that region should have the right to pursue that unitary system for itself, while the rest of the country that desires federal arrangements can pursue such federal arrangements. This is an accepted practice. Some federal and quasi-federal states in the world have this type of system. For example, the United Kingdom has a unitary system over all areas of England yet at the same time, it has devolved a semi-federal system to the people of Scotland, Wales and Northern Ireland, who on the basis of their ethnic differences desire to have self governance, yet at the same time are part of the United Kingdom. India too has some areas (e.g., Jamur and Kashmir) administered directly by the Central Government under a unitary system within the federal arrangement for the rest of the country and this has worked well.

This compromise was also reflected in the **Munster Commission** of 1961 that recommended Federal government for parts of Uganda and a unitary system for the other regions, which recommendation was taken up in the 1962 Constitution.

This scenario would be different from the 1962 situation in that we propose that provisions would be made in the Constitution to permit areas which do not immediately opt for the federal system to join at anytime. Unlike under the 1962 Constitution, they would not be locked out forever.

Traditional leaders under any federal system would be non-political and would not exercise executive authority in the region. In the case of Buganda, the Kabaka of Buganda would be a constitutional monarch over the people of Buganda.

There would be national parliament and executive that would establish national legislative and executive policy for the country. But the Federal regions would also establish federal legislative and executive units to legislate, implement and decide on regional matters affecting each particular region.

Like in all countries where the Federal system of government prevails, the rights of the Federal States should be entrenched in both Federal and National constitutions, with sufficient safeguards requiring a consensus of two-third's majority in the federal and national assemblies before any alteration of these rights can be done.

Doesn't the federal system of government make some productive regions richer and prosperous, while leaving others backward?

No. Federalism is supposed to achieve quite the opposite. Under a federal system, the more prosperous regions give part of their incomes to the other regions, so that a more balanced development of the whole country can ensue.

Under the federal system, taxes collected in the various federal regions of the country would be divided into three proportions. For example, 30% could be given to the Federal state to address the needs of the Federal Region, 30% could go the Central Government to take care of the Federal Government's responsibilities, and 40% could go the equalisation grants fund.

In almost every country where a federal system of government exists, there is a system of **"equalisation grants"** to address regional imbalance. These grants are given by the Central Government and onward to regions of Uganda that are behind other regions. For example, today, if Uganda was

divided into federal regions, some regions would be more advanced than other regions. The Central Government would then give the equalisation grants collected from all the regions to the less developed regions to ensure more balanced development.

The equalisation grants are also intended to be given to regions to make the responsibilities of the region commensurate to the funds given.

The concept of equalisation grants in Uganda is neither unfair nor new. It is already being used by the Central Government today.

Recognising different traditions and cultures does not mean that people are being divided along tribal lines. It is simply recognising the rich variety of cultures and traditions in a society. Every Ugandan should be free to live, work or settle anywhere in Uganda, under the federal system.

As a celebrated scholar noted:

"Africa has cornered itself into rejecting ethnicity as an organising concept in the process of nation-building. The challenge then is whether it is possible to reverse the mindset, so that ethnic groups which are African realities, could be seen in reverse light as resources or building blocks that can provide a sound foundation for a sustainable political and socio-economic development from within."

For example, the national parliament of Uganda is composed of representatives of different regions. While each representative is there to represent and advance the views of that individual's particular constituency, all representatives together represent the whole nation of Uganda. It cannot be said that the parliamentarians are sectarian because they represent individual possibly ethnic constituencies.

Another example can be drawn from the Baganda clans: The Baganda are divided into fifty-two clans. Each clan is different from the other fifty-one. It has different customs, different taboos, different names, different leadership

and different ancestral grounds and origin. These divisions can be misunderstood to mean that the Baganda are a divided people. Every year these different clans engage in fierce competition against each other in areas of sports, social and traditional duties to the Kingdom. Their differences and these competitions do not divide them. Rather it makes them appreciate their diversity. The reality is that just because people like their clan, does not mean that they do not like their being Baganda. It is the combination of these various clans that forms the people known as Baganda. Similarly, an Acholi is entitled to be proud of his heritage. That should not make him less Ugandan. The ability to attain one's cultural and traditional aspirations within a nation is the ultimate goal. Similarly, the appreciation of one's culture does not make the person like his nationality any less. In fact, like the clan example above, it makes him like it more.

The United Kingdom of Great Britain is made up of three major ethnic groups: the English, the Scots and the Welsh. The country is virtually divided into regions based on these ethnic groups. Nevertheless, it would be an unfair criticism to call this tribalism. The Scots love their heritage, but they also love to be part of the United Kingdom, as do the English and Welsh.

Does Federalism mean "Obugabe-ism" in Ankole?

Federalism should not be confused with Monarchism. The people of Ankole would get to choose the type of federal arrangements that would work well in Ankole.

This would not only be true for Ankole alone, but for the whole of Uganda, including Buganda.

What about people of different cultures who live or work in areas where one culture is dominant?

The interests of these people would be catered for. Whereas preservation of various cultures is a primary consideration, the rights of such people must be

respected and protected by the regional constitutions. This in Uganda is not an issue, especially in Buganda. Buganda believes and has always believed in the full participation of all people within the region. For example, even in the 1960's Buganda elected several non–Baganda to represent it in National Assembly. Examples include: Edward Simpson (an English man), Dr. Kununka (a Munyoro), Daudi Ochieng (an Acholi), Mrs. Visram (an Asian also known as Namubiru) and many more. Even in the current Parliament, Buganda is one of the few regions represented by people who are not ethnically of that region.

After 1993, Buganda Government started some schools, including Lubiri Secondary School located right in Kabaka's Palace. None of these schools are exclusively attended by Baganda children. Over 30% of the current enrolment are non-Baganda children from within and outside Buganda. The Kabaka Foundation, an educational fund, contributed to mostly by people from Buganda, is currently giving education scholarships for students in Buganda, over 27% of whom are non-Baganda. The Buganda Land Board, which administers the land returned to the Kabaka in 1993, has granted several leases on this land to various Ugandans, regardless of their ethnic backgrounds. As a matter of fact, 40% of the leases granted by the Land Board on Kabaka's returned land in the Kampala area are to non-Baganda. This is inspite of the original imaginary fears that retuning Kabaka's land would mean sending non-Baganda or even Baganda off it. This is, and has always been and will always be, the Buganda spirit.

It is also important to remember that the services or facilities that the Federal system bring to any particular region benefit everyone in that region irrespective of their ethnic origin. For example, the roads, schools, and hospitals constructed would benefit all users and not just the people of that region.

Before the restoration of kingdom in Buganda, all kinds of imaginary fears were expressed. For example, that with the return of the Kabaka, non–Baganda were going to be expelled from Buganda, or that every body was

going to be forced to kneel before the Kabaka. As time has shown, all these were unfounded. Similar unfounded fears have been and will be expressed in the case of federalism.

The National Constitution of Uganda does and should guarantee the equality of all people regardless of ethnic origin in any part of Uganda. The people of Buganda strongly believe in this standard.

For example, residents of Kampala who are not Baganda cannot and have never been evicted, or denied any right they are by law entitled to, on the basis that they are not Baganda. Similar standards should be applied to all other parts of Uganda.

There can be no unconstitutional restrictions on the right to purchase, own or use property, or the right of movement in and out of any region, or the right of employment, or the right to pursue any legitimate objectives in any region of Uganda based on ethnic origin.

Just like the United Kingdom does not accord English people in London special rights over the Welsh or Scots, there can be no discrimination of any kind, by any group of people, from any part of the Country on the basis of ethnic origin.

Even in the 1960's when Uganda was a federal state, all Ugandans enjoyed the same rights and privileges in Kampala, or in any federal state of Uganda, regardless of their ethnic origins.

The people of Buganda recognise and appreciate that several areas of Uganda have been devastated or neglected for several decades. As a result, the levels of development in these areas fall far behind other areas.

As already stated, the system of equalisation grants is designed to address the current existing imbalances.

In addition, it should firmly be reiterated that the people of Buganda fully support the progressive implementation of an affirmative action plan designed to address current regional imbalances, to ensure that the various federal regions of the country enjoy similar standards of development.

The Central Government should have the right to have offices and premises in all the federal regions of Uganda. The current major offices of the Central Government are located in Kampala District. These offices should remain.

There should also be appropriate provisions in the National Constitution to ensure that no regional government has the right to evict the Central Government from any region of Uganda.

The 1995 Constitution provides that Kampala District is not part of Buganda.

THE LEGAL BASIS OF BUGANDA'S DEMAND FOR FEDERO

Although Buganda has never come out to explicitly delineate the legal basis of its demand for *federo*, it can generally be accepted that its quest for *federo* is based on three major legal arguments. First, there was the unilateral abrogation of the 1962 Constitution. Second, there is Buganda's right to self-determination as guaranteed by many international and regional instruments to which Uganda is party. Finally, and related to the above, Article 1 (4) of the 1995 Constitution provides that the people shall be governed through their will and consent. It is necessary to critically examine each of these claims in turn.

The Unilateral Abrogation of the 1962 Constitution

As earlier pointed out, Buganda's status both under the 1900 Uganda Agreement and the 1962 Constitution was of a federal nature. The 1962 Constitution guaranteed Buganda's position as a federal state with cultural attributes while the rest of the kingdom areas were to operate under a quasi-federal arrangement. With the 1966 crisis when central government forces

invaded *Kabaka*'s palace and the *Kabaka* was forced to flee, Buganda's federal status was unilaterally abolished in contravention of the 1962 Constitution. In 1967, a new Constitution was put in place. This Constitution officially abolished the federal arrangement all over Uganda. The Constitution also unilaterally abolished the institutions of traditional and cultural leaders. Buganda therefore argues that the government should make good the breach that was committed in 1966 by Obote when he unilaterally abolished *federo*. Apollo Makubuya (the current Attorney General and Minister of Justice and Constitutional Affairs in the Buganda Government) has stated as follows:

Buganda is aggrieved by the unilateral actions of Obote's government in abrogating the 1962 Constitution and the abolition of Kingdoms and federalism. It believes that it was short-changed by thecurrent Government that restored traditional leaders in 1993 without a constitutional basis as to how they are to govern their subjects. Also, the Odoki and Ssempebwa recommendations on the issues of federalism have not been accorded serious consideration by the Government[203]

The remedy that Buganda seeks for the 1962 breach is the restoration of Buganda's status as a federal state within Uganda. This argument raises novel issues in constitutional law. Indeed, it would be interesting to see how a court of law would resolve it if Buganda chose to institute a suit based on this ground. Some of the interesting issues the argument raises include:

To what extent can subsequent Governments be held liable for the breaches of constitutional provisions committed by previous Governments?

What remedies accrue from the breach of constitutional provisions of the nature that Buganda bases its claims on?

[203] Makubuya, 2006.

Buganda's argument based on the breach of the 1962 Constitution also seems to ignore the fact that while it is important that constitutions should not be changed except when it is absolutely necessary and in accordance with its democratic provisions, constitutions are dynamic instruments. They are never intended to be static. They should adapt to and reflect the prevailing social, economic, cultural and political realities of the time. It is unimaginable that even if Obote had not unilaterally abrogated the 1962 Constitution, it would still be the prevailing constitutional order of our times. In advancing the above legal argument, it is therefore important to put into consideration the above perspective. Buganda's argument also seems to give little attention or accept the fact that there have been several important political processes in the country that have attempted to right the wrongs that were committed especially during the Amin and Obote eras. It is instructive to note that delegations representing Buganda's interests have actively participated in these processes. Most important of these processes are; the restoration of institutions of traditional and cultural leaders, the making of the 1995 Constitution, and the passing of its subsequent amendments. While these processes have had several loopholes and limitations, their outcome is generally accepted as consensus on the different issues including the f*edero* question.

The right to self-determination

Perhaps, Buganda's strongest legal basis of its demand for *federo* lies in its right to internal self-determination.[204] Major regional and international instruments to which Uganda is party guarantee this right. Most relevant in Buganda's case, is the African Charter on Human and Peoples' Rights (the Banjul Charter). As such, Uganda is obliged to respect, uphold and facilitate the enjoyment of this right by its beneficiaries.

Article 20 (1) of the Banjul Charter provides that:

[204] For a discussion of the meaning of internal self-determination, see

All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self- determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

It is important to underscore the point at this stage that in Buganda's case, its assertion of the right to self-determination is inherently linked to the right to culture, which is guaranteed by the Constitution.[205]In the words of John Kawanga:

...A question had been asked, what if Buganda wants a federal system of government and the rest of Uganda do not want it, how can Buganda have it? In other words, who will Buganda federate with? It will be noted that federalism is some times a way of preserving cultural and historic diversity and individuality within the framework of a greater national entity. In fact, this is the most compelling aspect for the Baganda in this regard. They have a monarchy, which is inextricably interwoven with their cultural heritage, which they hold so dear and want to preserve... It is necessary for other Ugandans to appreciate that the Kabaka, to the Baganda is not just a traditional ruler. He is an institution, which has evolved over a period of 500 years and more.[206]

In the same vein, while clarifying on Buganda's *federo* demands, Godfrey Lule argues that:

...Buganda is essentially demanding a system of governance, which allocates to the government of a region, province or state a political structure... which takes into account, and permits, the incorporation of the cultural values, traditions and practices cherished by the indigenous people of that region...[207]

[205] See Article 37. The essence of this right is that every person has a right to belong to, enjoy, practice,profess, maintain and promote any culture and tradition

[206] Kawanga, 1994.

[207] Lule, 2006.

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Although the right to self-determination was traditionally only interpreted within the context of the decolonization process, developments in legal theory and the doctrine have given way to new forms and degrees of its exercise.[209] Thus in *Katangese Peoples' Congress v. Zaire: Judicial determination of Claims to Self-determination*,[210] the African Commission on Human and Peoples' Rights (ACHPR) had an opportunity to expound on the right to self-determination as it should be understood within the context of the Banjul Charter. The Commission stated that:

The Commission believes that self-determination may be exercised in any of the following ways: independence, self- government, local government, federalism, confederalism, unitarism or any other form of relations that accords with the people fully cognizant of other recognized principles such as sovereignty and territorial integrity.

The above decision makes clear the point that federalism is one legitimate way of exercising the right to self-determination. The factors that give rise to possession of the right to self-determination generally include: a history of independence or self-rule in an identifiable territory, a distinct culture, and will and capability to regain self-governance.[211] Buganda meets all the above

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[208] Lule, 2006.

[209] Onoria, 2001.

[210] *Katangese Peoples' Congress v. Zaire*, ACHPR Commn. No. 75/92.

[211] Although these factors apply generally to the right to self-determination in the context of secessionespecially in decolonization, they can generally be said to apply to federalism as well.

factors. Its demand for *federo* can therefore be legally justified on the basis of its right to self-determination.

In this regard, it is critical to emphasize that Article 20 (1) of the Banjul Charter relates the right to self-determination to the right to existence. Henry Onoria has concluded that in effect, the conduct of a state that

undermines the very existence of an ethnic group or part of its people would be in violation of the right to existence.[212] The right to existence and the preservation of the cultural and traditional beliefs of Buganda as a kingdom has always been at the centre of its advocacy for a federal system of governance.

In exercising its right to self-determination, Buganda should however be aware of the limits to this right. As enshrined in the Banjul Charter, the right to self-determination is subject to the need to uphold the territorial integrity and sovereignty of the particular state.[213] In determining the Katangese claim to self-determination, the ACPHR emphasized that it had an obligation to 'uphold the sovereignty and territorial integrity of Zaire, as a member of the OAU and a party to the African Charter on Human and Peoples' Rights.'[214] The Commission therefore held that '...Katanga is obliged to exercise a *variant* of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.

Article I of the 1995 Constitution

Closely linked to the right to self- determination, is Article 1 of the Constitution, which proclaims that all authority emanates from the people of Uganda and that the people shall be governed through their will and consent. Article 21 (3) of the Universal Declaration on Human Rights

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[212] do not infringe other peoples' rights,their demands should be granted. In this case, given the findings of the Ssempebwa Commission which seem to indicate that federalism as a
[213] Onoria, 2001.
[214] *Katangese Peoples' Congress v. Zaire*, ACHPR Commn. No. 75/92.

(UDHR) is also to the same effect. Although the Banjul Charter makes no reference to the will of the people as the basis of government, the ACHPR has interpreted Article 13 thereof to enjoin the presence (or non-negation) of the will of the people.[215]

The essence of these provisions is that the will of the people should be the basis of Government. These provisions require that governments derive their just powers from the consent of the governed. This is a democratic entitlement of all citizens of any state. Government is therefore obliged to govern the people of Uganda and specifically Buganda in this case according to their will. Buganda's will is to be governed under a *federo* arrangement.

Some reflections on the way forward

President Museveni has once again expressed a willingness to discuss the *federal* issue, but this time, only with the *Kabaka*.[216] This willingness although suspect, is a positive gesture on the part of the President in so far it indicates a willingness to further discuss the issue. At the same time, it is important to recall that virtually all of the discussions about the status of Buganda have taken the form of a 'deal' between a handful of central government politicians and an equally small number of Baganda politicians. This was the case in the run-up to independence in 1962, and led to the infamous marriage of convenience between Milton Obote's UPC and what came to be known as Kabaka Yekka (KY), representing the interests of the Baganda elite. The 1966 crisis was the outcome of that 'deal.'

The restoration of the *Kabaka*ship in 1993 assumed the same form, with a negotiation between key Baganda within the NRM and President Museveni (even if the Army Council was ostensibly consulted over the matter). The

[215] Ibid 9

[216] Robert Mwanje and Al-Mahid Ssenkabirwa, 'No Museveni, Kabaka Talks on federo-Lukiiko,' *The Daily Monitor*, May 23, 2007 at p. 13.

manner in which the restoration was negotiated has clearly led to the subsequent problems that surfaced after the enactment of the 1995 Constitution. Likewise, negotiations that resulted in the Regional Tier were held behind closed doors, and its fate was sealed even before the ink had dried on the agreement.

Given the above, it is fundamentally important to underscore the point that the President is not the giver or guarantor of peoples' rights, including the right to self-determination. The President is just one of the main actors in the above regard. It is therefore important that the *federo* question be discussed and negotiated with all major stakeholders in the country, and most especially with the Parliament of Uganda. *Federo* for Buganda is such an important and vital national issue that it should not confined to a discussion between President Museveni and Mengo alone, or in the worst-case scenario, between the President and the *Kabaka* alone, as the former wants it to be. In fact, the earlier that Mengo engages and involves Parliament and other major stakeholders in a discussion of the issue, the better its chances of persuading Parliament to ratify or agree to whatever "deal" may be struck with the President. More importantly, it is time that the question of Buganda not be the subject of a "deal." That is not sustainable.

There is also a need to recognize that federalism as a system of governance from which Buganda's *federo* demands spring, is always a negotiated outcome that involves a lot of compromise on the part of the various stakeholders involved. Thus, the stakeholders in the *federo* debate should be flexible and willing to compromise on their demands. Any compromise reached must however address the social, economic, political and cultural dynamics not only in Buganda but also Uganda as a whole.

The need for further research on how federal arrangements work cannot be over-emphasized. There is a lot to learn from experience of successful federations in the world. Further research will be critical in informing any further debate, negotiations and decision-making on the *federo* question.

In so analyzing, Buganda's demand for *federo* cannot be pushed aside and/or suppressed any further. Buganda has a legal and legitimate right to self-determination, and the right to existence as a people. It also has a democratic right to be governed according to the system it likes, as long as all the above does not infringe the rights and freedoms of other people and it ensures the sovereignty and integrity of Uganda as a nation.

Since Buganda is still part of Uganda and its *federo* demands if granted would affect the entire country, the *federo* question must be discussed and negotiated with all major stakeholders. The discussions and negotiations must be guided and based on democratic principles, and norms of fairness, openness, honesty, and cooperation. For the sake of peace, stability, unity and national development, all the stakeholders in the *federo* debate must be ready and wiling to compromise on their demands. Once a negotiated settlement is agreed upon, all stakeholders must respect and uphold it. The time is now to have a national consensus on Buganda's quest for *federo*.

Restitution of assets and properties (Ebyaffe)

"Ebyaffe" is a Luganda notion adopted by the Baganda in their vocabulary to mean "our property". Upon its resurrection in 1993, the kingdom that had been abolished in 1967 commenced its agitation to reclaim property confiscated by the central government of Dr Milton Obote after the abolition of these institutions. These were abolished by the Ugandas prime minister in 1967 in what was a struggle for power between the king Edward Muteesa II who was a ceremonial president and him. When Obote attacked the Lubiri in 1966 and ripped apart the 1962 independence Constitution. He confiscated Bugandas land and assets and abolished kingdoms. Indeed, it looked like that was the end of the ancient kingdoms.

In dark days that followed, it was inconceivable that the kingdoms would ever resurrect. Dr Obote and his ilk were determined to obliterate its existence and history. To achieve this agenda to demonize Buganda kingdom and its supporters, he imposed along state of emergency in Buganda and detained,

harassed anyone known to support the kabaka. He then wickedly turned the kabakas palace into an army barracks and the kingdoms seat in Bulange into his army's headquarters and callously renamed it "Republic House" and the worst he could add was the sale of other properties which he confiscated.[217]

When Museveni started a guerilla war in 1981, its nucleus was in Buganda kingdom. The Baganda as well gave mass support to NRA forces. As a consequence, after capturing power Museveni rewarded them by restoring kingdoms. Among these was Buganda kingdom, Bunyoro kingdom, Tooro, Busoga kingdom and others. For Buganda, Ronald Mutebi was enthroned in 1993. This was a move to reward the Baganda for their support during the war.

Abu Mayanja was appointed co-chair of the Kabakas coronation and the coronation was announced. The process of restoration nevertheless did not pass without challenge. In in a bid to stop the coronation, a Kampala based lawyer sought an injunction arguing that the provisions of 1967 Constitution would be violated if it took place.[218]It stated that when Museveni returned from the trip that he had made oversees, he requested the National Resistance Council to amend the constitution to allow the coronation. Because of the role played by the chief actors on both sides of the issues that is Abu Mayanja, vice president Samson Kissekka and foreign minister and DP Chief, Paul Ssemwogerere. The coronation was a success and the kabaka Ronald Muwenda Mutebi was coroneted as king at Nnagalabi. However, the question that arose was on the relationship that could stand between Buganda and the central government. This was to remain a story to be narrated upon witnessing the events after. The central government failed to understand that culture cannot easily be separated from politics given the

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[217] Monitor, Saturday, 3rd August, 2013.20 years on: Is it sunrise or sunset for Buganda. Available on hhtps://www.monitor.co.ug

[218] Miscellaneous Application No 74 of 1993.aslo See Mutebi Coronation Hit by Injunction New Vision 29th May 1993

status of Buganda in Uganda. Buganda was to continue influencing the politic of Uganda. As Oloka Onyango asserts, the issue of Buganda has clearly returned to a position of pre-eminence in the politics of the country and become deeply entrenched in the machinations for political power. Indeed, the kingdom has continued to be a critical importance in the political evolution of the Pearl of Africa.[219]Many events have been witnessed as a result of the silent political interests of the Baganda and the central government aimed at achieving its denied interest such regaining its property and achieving federalism. Though the two continue to pretend, there actions can no longer be hidden. Buganda's continued demand for federation and property has challenged the central government. The two have been clashing in various ways.

After his coronation in 1993, an event was held to thank the president for his role in the restoration of the kingdom and Museveni noted that "Buganda was a microcosm of Uganda." "What Buganda is doing is what the rest of Uganda should be," he said, urging other traditional institutions to emulate it. This was seen as the most generous and reconciliatory speech to the Baganda by any sitting president. Indeed, the relationship between the kingdom and Musevenis government was one that deserved a fairy tale not until the mid-2000s when it split.

The primary point behind the administrative brake down was centered in Buganda's claims and interests. Among these was Bugandas continuous demand for federal, a system that would place Buganda under self-governance as per the semi-federal 1962 constitutional status and second was Bugandas demand for "ebyaffe" Bugandas property that was captured and confiscated by Dr Apollo Milton Obote and some of which he sold.[220] The property included Bulange and other palaces, kabakas 350 mailo land estate,

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[219] supra

[220] Musinguzi Blanshe. Uganda: Is Museveni ready to take on Buganda Kingdom in a tough fight over land. Available on hhtps://www.theafricareport.com

Kabakas Lake and the state lodge in makindye. But the kingdom claimed that these could not generate enough revenue thus wanted all property returned.

When the constitution was revised in 2004 and 2005, Buganda wanted a second bite of the cherry, it thus through its premier JM Ssemwogerere marshaled thousands of supporters to the Nile conference Centre to tender Bugandas constitutional aspirations. But once again in spite of the popularity of the views, Buganda's efforts yielded no fruits and the outcome of the revisions was the regional government's law which was initially welcomed but on closer scrutiny was later roundly rejected. Thus, although a decade after its rebirth, Bugandas sun was out, a dark cloud was preventing it to shine. The kingdom then started advances to demand for its property.[221]

In 2013, "Ebyaffe Agreement" was made under the Constitution of Uganda and in accordance with the Traditional Rulers (Restitution of Assets and Properties) Act of 1993-TRRAPA. It was executed between the government of Uganda and kabaka of Buganda. As such, it was an enforceable and binding contract.[222] After its execution, there was a view that the agreement be laid before parliament to test its legality. However, this view was rubbished by many claiming that it had no legal basis.

Parliament had passed the TRRAPA under which the kingdom properties, including the 350 square miles, Bulange and the Lubiri were returned in the past. In its long title, the Act noted that, **"An Act to give effect to Article 118A of the 1967 Constitution and to restore to traditional rulers assets and properties previously owned by them or connected with or attached to their offices but which were confiscated by the State and t make other provisions relating or incidental to or consequential upon, the foregoing."[223]** Thus as noted from the long story, the Act was to cater

[221] Supra.
[222] Monitor. Buganda Agreement deal is real. Available on https://www.monitor.co.ug
[223] Long Title to Traditional Rulers (Restitution of Assets and Properties) Act Cap 247

for the restoration and return of property belonging to the kingdoms and chiefdoms recognized under Article 118 of the 1967 Constitution.

Section 6 f the TRRAPA particularly provides that the traditional leader of Buganda shall hold negotiations with the government with a view to returning to them such assets and properties other than those specified in the Schedule to the Act. Thus, it was on this basis that the kabaka and the government executed the agreement. This law neither requires public negotiations for the return of the assets nor envisages a need for parliamentary approval of any agreements reached.

The ebyaffe agreement started from the reign of premier minister J.B Walusimbi and resulted into long and difficult negotiations. The katikkiro entered those negotiations with express instructions of the Buganda Lukiiko. In fact, based on the frustrations and delays on the return of ebyaffe, the Lukiiko thus proceeded to ask the katikkiro to consider taking legal action against the government.

Thus it was against this background and with leave of the kabaka, that katikkiro Charles Peter Mayiga concluded the discussions where the agreement under took to return to the kabaka the former estate of Buganda kingdom comprising land in urban centers and towns; all former administrative areas (amasaza and amagombolola) headquarters; Jesa farm, former kingdom markets; compensation for Muteesa House and plot 52 on Kampala road; renewed leases and the payment of 20,389,206,000 in the next financial year. By any measure, this agreement was a land mark achievement in Bugandas struggle to regain its properties that were stolen under Milton Obotes reign.

Given the long history of how the assets were confiscated, the long and painful struggle that Buganda had endured, mengo cannot be blamed for signing that agreement. However, the government had earlier noted that unless and until Buganda accepts the regional tier, it would not return the assets because Buganda did not show them where they were; furthermore, in

case of Amasaza, that instead of returning all the land, it would return only three acres out of the eight square miles on each Ssaza headquarters and that the land could not be returned because it was now under district administration.[224]

Besides this, chicanery, the payment of rent arrears had also been a problem since 1993 with the result that the kabaka had to sue the government for the rent for kigo prison. This however raises questions as to whether the government will respect the contents of the agreement. (Ebyaffe Agreement). In the past, there has been doubt within the government circles as to whom these assets should revert to and where they are. With the agreement in place, the excuse was now no more. The question that remains on the return of the assets is only about when and not if or how?

The other question has been whether or not the kabaka will require permission from Ssabanyara or Ssabaluri to visit the counties of Bugerere or Buluuli. According to the agreement that was executed between Museveni and the Kabaka, the government agreed to return all counties and sub-counties administrative buildings and land, Muteesa House in London, Jesa farm on Mityana road which was sold by Milton Obote government, plot 52 on Kampala Road which houses king Fahad plaza and all land belonging to the kingdom.

In addition to this is the kingdom land which tenants have "illegally" occupied over the years to be returned but mengo and the central government was to decide on the fate of the tenants. All markets belonging to the kingdoms were to be returned but those under construction or already built were to be subject for discussion between the two governments. The government further in the agreement went on to promise payment of shs 20 billion in accrued rent areas to Buganda in 2014/15 financial year and to guarantee the kabaka free movement in any part of Buganda and Uganda.

[224] Supra note 82

Noteworthy is that the demand of its property inspired other kingdoms and chiefdoms to agitate as well for the return of their property. Thus, these kingdoms were not willing to entertain any message from the central government other than one in affirmative towards their request. The agreement influenced and increased this demand in other areas or kingdoms.

On his 18th coronation anniversary, the Omukama of Tooro, Oyo Nyimba Kabamba Iguru asked president Museveni to return the kingdoms properties. He noted that Tooro lost its assets when monarchies were abolished in 1967 and that return of the properties would enable them put the assets to good use for the benefit of Batooro.[225]

Close to two decades after the restoration of cultural institutions, the kingdom of Tooro just like Buganda kingdom decided to review its call to the central government for the return of the kingdom property. Through its prime minister, Bernard Tungwako, the kingdom as well-expressed disappointment that properties for other kingdoms were being returned and meeting being held unlike for them. “We want our properties returned in order to allow the kingdom offer services to the people. The government should not discriminate against Tooro kingdom.”[226] The kingdoms properties are part of the assets that were captured and taken over the central government in 1967. The abolition of the kingdoms affected all kingdoms across Uganda and Tooro kingdom was thus not special hence requires the same treatment.

After restoration of kingdoms, the central government in 1999 only returned 17 titles located in fort portal town out of the 120 titles claimed by the kingdom. Since then, the kingdom has been engaging with the government pushing for the return of all kingdoms land but this has always been in vain. Thus in 2017, the kingdom through its supreme council (Orukurato) passed

[225] Moses Talemwa. Buganda offer Sparks off ebyaffe frenzy elsewhere. Observer, 13th September 2013

[226] Tungwako Benard. Tooro kingdom premier. Daily Monitor, August 12th, 2018.

a resolution to drag the government to court if their assets were not returned. The resolution was supported by all members of the council with one voice of regaining the kingdoms lost property.

The council also inaugurated the negotiation committee comprising the kingdom prime minister, kingdom minister of lands and chairperson kingdom land board among others. This was to front its grievances to the government. [227] As stipulated by the Ankole Landlord and Tenant Law, 1947 and by Toro Landlord and Tenant Law, 1937 108 In Uganda today, public leases are provided for under the Public Lands Act, 1969.

W. Kisamba Mugerwa. Private and Communal Property Rights in Rangelands and Forests in Uganda.Makerere University of Social Research, MUK. As stipulated by the Ankole Landlord and Tenant Law, 1947 and by Toro Landlord and Tenant Law, 1937 108 In Uganda today, public leases are provided for under the Public Lands Act, 1969.

, the committee met with the minister for local government over their grievances. The kingdom however noted that despite all this, the kingdom has not received anything from the central government and thus the 103 titles remain a demand by the kingdom. These titles constituted both the kings and the institutions land.

During celebrations to mark the 13th coronation anniversary of Prince William Gabula IV of Bugabula chiefdom in Kamuli, the chiefdom in Kamuli, the chief prince, Issabalagira Kawunhe Wakooli spoke on behalf of the kingdoms 12 chiefs and asked the president who was in attendance to reinstate their legal ownership of the cultural institution's estates. The properties included land and buildings, housing all local government offices (districts and sub counties) and courts of judicature in the region. "Peoples government using our properties should start paying revenue (obusulu) to

[227] W. Kisamba Mugerwa. Private and Communal Property Rights in Rangelands and Forests in Uganda.Makerere University of Social Research, MUK.

our chiefdom… Therefore, Mr. President as you have done to our colleagues in other regions, we too need our properties."[228] Wakooli noted.

Bunyoro also raised the same issue through its secretary to the Omukama; Yoramu Nsamba. He observed that the kingdom had been making demands for a while but all in vain. "What Buganda or any of these cultural institutions is demanding is very small compared to what we are owed. And on top of that, it is not a matter of just asking as individuals, this "ebyaitu" belongs to Bunyoro as an institution." According to Bunyoro kingdom the central government owes Bunyoro 12.5 percent royalties for the minerals found on its territory, including petroleum and uranium, under the 1955 agreement. In their furthered claim, anybody who comes to do mining or oil exploration must consult the kingdom, but none of the above was undertaken by the central government.

Bunyoro thus claims for payment of nearly 700-million-pound sterling (shs 6 trillion) that they claim the destruction of their land and death of nearly two million people at the hands of cap Fredrick Lugard and Capt. Henry Colville. Other properties claimed by Bunyoro included county headquarters, schools, forest reserves, equity in Kinyara sugar works and James Finlay Tea Factory, all of which were confiscated by the central government. A one Kasozi said the claim for restitution of Bunyoro boundaries to those of 1900 status was as well a very critical point that their kingdom had submitted to the central government through the Attorney General Mr. Peter Nyombi.

Bunyoro Kingdom continuously demanded the return of its properties confiscated by the state in 11967 and the restoration off its boundaries to the status of 1900. Omukama Solomon Gafabusa Iguru went one day claimed that he wanted to know why the government had delayed to return the kingdom properties even after the president's directive and approval. The submission to the government was headed by the Prime Minister Rev. Jackson Nsamba Kasozi who stated that whereas under a statutory

[228] Ibid

instrument in 1967, Bunyoro properties were on September 8th, 1967, confiscated by the Uganda government without compensation and the government still holds many of the assets to date.

Mr. Kasozi, the kingdom premier, in a detailed claim said that the statutory instrument of July 30, 1993 cancelled the 1967 instrument which confiscated the kingdom assets and paved way for the return of those properties.[229]Among the still owed property include forest reserves, official estates, palace grounds at Hoima and Masindi, administration headquarters, some health units, schools, markets, royalties from forests, national parks, fish landing sites, minerals and compensation for loss of value of kingdom assets that have for decades been under.[230]

In their detailed press address, many of these properties are in the hands of the central government, while others like land now fall under Buganda kingdom authority. It is not clear how Bunyoro will repossess these properties without causing a collision with Buganda. After a long period of negotiation with the central government, Mr. Peter Nyombi the Attorney General wrote to the king Iguru on April 17 indicating that the government had prioritized the return of Kyangwali and Kyampisi ranches.

Noteworthy is that in 1994, a memorandum of understanding was signed between the Bunyoro Kingdom and the central government being represented by the prime minister Apollo Nsibambi where in 113 properties were listed to be property of the kingdom. Just like Buganda, some properties were returned and others were not and up to now still in the possession of the central government but what hurts the kingdom is that despite their return, the government has never released the land titles for the estates. This leaves the question of whether the government could respect the Traditional Rulers

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[229] Geofrey, S. Bunyoro demands 440 assets from government. Available on https://www.monitor.co.ug

[230] Ibid.

(Restitution of Assets and Properties) Act after these kingdoms and other chiefdoms holding meetings with the central government over the same issue.

To some point, the return of these assets or property has been used as a political tool especially by the president; Museveni where he continuously uses it as a promise to the subjects during campaigns. But truth be told, some of these properties are being held by the presidents Hench men who are unwilling to return them thus becoming a challenge. Some of it is deliberately being denied to them for fear that Bunyoro and other kingdoms like Buganda may gain economic muscle thus becoming a threat towards the NRM government thus the continuous frustration from the government.

The question is, did government restore all cultural institutions or its just perse analyzing article 118A of the 1967 constitution, which was replaced by traditional rulers' assets and properties act that aimed at giving out the properties of Buganda that were confiscated by state as per schedule 2 of the Tradition Rulers act The answer can be seen unto the Kasubi Tombs that was given to Buganda kingdom, **The burial grounds for Buganda kings, was razed on the evening of March 16, 2010, by an unexplained fire** the report wasn't clear on what made Spiked off the Kasubi Tombs.The engagement of the Katikiro of Buganda Charles Peter Mayiiga in the collection of Tributte (TAFAALI) in the construction of Kasubi Tombs was a good go ahead for Buganda to start liberate what is hersThey finished the reconstruction and restoration of Muzibu-Azaala-Mpanga (main house), renovation of Bujjabukula (gatehouse) and a fire-fighting system. They finished the reconstruction and restoration of Muzibu-Azaala-Mpanga (main house), renovation of Bujjabukula (gatehouse) and a fire-fighting system.

They added documentation (visual and text) of the reconstruction and refinement of the Site Disaster Risk Management Plan that will enhance the heritage conservation aspect to safeguard its Outstanding Universal Values. The central Government in 2013, it didn't restore back what belongs to Buganda fully thus what Baganda refer to it as "BYOYA BYANSWA". The Kasubi Tombs apparently is controlled by UNESCO not by the

administration of Mengo restoration of the Unesco World Heritage Site that is Kasubi Royal Tombs is at the roofing stage and the site will soon be taken off the List of World Heritage in Danger by year-end they have finished the reconstruction and restoration of Muzibu-Azaala-Mpanga (main house), renovation of Bujjabukula (gatehouse) and a fire-fighting system.

The new site office is fully kitted with work stations and computers with internet connection. They added documentation (visual and text) of the reconstruction and refinement of the Site Disaster Risk Management Plan that will enhance the heritage conservation aspect to safeguard its Outstanding Universal Values. The project will also establish model farms for thatching grass, reeds and the Misambya (Markhamia lutea) trees. The Kasubi Royal Tombs of Buganda Kings were inscribed on the Unesco World Heritage List in 2001. After the destruction of the site, the site was placed on the List of World Heritage in Danger by the World Heritage Committee.[231]

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[231] David Kyewalabye Male, a member of the committee and Minister of Tourism and Culture in Buganda Kingdom said, "The reconstruction would have been a simple task if all we had to do was to put up an architectural masterpiece. However, the intangible cultural intricacies (of belief, spirituality, continuity and identity) required utmost attention to values that make Muzibu-Azaala-Mpanga different from other grass-thatched houses. We have respected those values," Male said.

Unesco's Regional Director for Eastern Africa, Prof.Hubert Gijzen visited the Kasubi Royal Tombs on February 24, to check on the progress of the reconstruction. The reconstruction was also partly funded by the government and officials from the Ministry of Tourism, Wildlife, and Antiquities, Uganda National Commission for Unesco, Buganda Kingdom, and Kasubi Reconstruction Committee.

Prof Gijzen termed his visit to Buganda Kingdom the highlight of his trip in the sub region. "Visiting such sites is important because they tell a story, and enable us to reflect on a history," he said.

"The next step should be to turn this facility into a flourishing site," Prof Gijzen suggested. "The creative industry should bring more action to attract tourists. We hope tourists will return to this site if it goes back to the original list. There should be traditional food and

A distinction between the Kabaka as an entity and as a person

Does the kabaka act on behalf of people of Buganda or on his personal capacity?

Per article 6 of the 1900 buganda agreement, kabaka's powers where reduced and when the traditional rulers where restored, Kabaka was't given back his powers as per the Restoration of tradition act. Basing on the case of Mulira vs kabaka of Buganda[232]. slept with Muilira's wife, thi inturn annoyed Mulira and sued the kabaka hence succeeded.in also the case of Male Mabirizi Kiwanuka, it was stated that kabaka can be sued, he doesn't have absolute powers.

Kabaka deligates authority for example Buganda land board unto his land and one needs to sue him personam. **Bagamugunda Vincent vs. UEB (in liquidation) HCCS No. 400 of 2007.** [233]

Accordingly depending on where this land is situating, the right party to be sued should have been the Kabaka of Buganda. Indeed Article 246 (3) (a) of the Constitution provides that:

"The institution of a traditional leader or a cultural leader shall be a corporate sole with perpetual succession and with capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned. The case was therefore dismissed without costs. In Conclusion therefor the restoration of traditional ruler's act, it gave authority to the restored traditional rulers but not absoluty powers beause they don't have any immunity to protect them.

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creative industry product stands to attract visitors and contribute to the sustainability of the site

[233] www.ulii.com

The consequences of the 1900 Buganda agreement unto Buganda land as per article 15

The question of 9,000 square miles

The Mailo land tenure system is one of the most complex among Uganda's four tenure system.

Its ambiguity leaves many people mistaking it for the Freehold tenure system. While these two tenure systems have some similarities, they are by far different. Mailo land has its origins in the 1900 agreement which was signed between the regents of Buganda, acting on behalf of the young Sir Daudi Chwa, and Sir Harry Johnson on behalf of the queen of England.

This agreement divided the 19,600 square miles that form Buganda kingdom among different entities and individuals. These included the Kabaka (king), regents, chiefs, central government, key offices and other individuals who were found fit.

Before we delve much into the distribution of this land, let us first understand Uganda's four tenure systems. The first one is customary land tenure; this is land that is held

basing on particular customs, traditions and norms of people. It is often communal. It is commonly owned by indigenous communities in Uganda.

Such land is found in the northern and eastern parts of the country. Freehold tenure system; under this system, one owns land for eternity and he/she is entitled to a certificate of title. In Uganda, this is the most favoured tenure.

Leasehold tenure; this is where a lessee has exclusive possession of land through an agreement with the landlord. The agreement is for a specific period of time subject to premium and ground rent. Mailo land tenure; This is the most misunderstood tenure in Uganda simply because it creates dual ownership over the same piece of land

Mailo is a unique form of land tenure in Uganda. Around 9 per cent of the country's land is held under the mailo system, which is similar to freehold. It was set up by the 1900 Buganda Agreement. Idi Amin then made all land publicly owned, and the 1995 Constitution of Uganda reintroduced mailo.

In the 1900 Buganda Agreement, the Uganda Protectorate (part of the British Empire) granted the Buganda Kingdom land because it had helped the colonisers conquer the country. The Buganda aristocratic class was awarded land parcels broken up into plots of square miles, hence the name "mailo". These parcels came with farmers in situ, therefore the mailo system produced private owners for customary land, whilst the tenants continued to work the land. In 1928, amendments were made to give the tenants more rights.

After the 1971 Ugandan coup d'état, all land was made publicly owned following Idi Amin's 1975 Land Reform Decree. In theory this destroyed the mailo system, although little was done in practice. Under the 1995 Constitution of Uganda, mailo was reintroduced and land can have four forms of ownership: mailo (official or private), customary, freehold or leaseholdTenant rights were then boosted by the 1998 Land Act and its 2010 amendment.

The Constitution of Uganda in 1995 introduced the concepts of "bonafide occupants" and "lawful occupants" of land and security of occupancy. The Constitution further provided that Parliament shall enact a law to give meaning to these terms. The law that resulted was the Land Act, 1998.

The Land Act, 1998 needs to be repealed and its aims and objectives should be revisited to ensure that it adheres to well-established principles of Constitutional Law and does not violate Fundamental Rights and Freedoms. In enforcing the rights of Bonafide and lawful occupants as set out in the Constitution, it tramples on the constitutional fundamental rights and freedoms of landowners.

When the Land Act automatically creates tenancies, and takes away the land owner's right to negotiate fair tenancy terms; when it restricts the land owner's right to use the land; when it restricts the rights of a title holder to transfer, pledge or mortgage land; it is taking away the essence of ownership, and is interfering with the property rights of the land owners, which is unconstitutional.

This unconstitutional 1998 Land Act deprived land owners who had invested in land of their property without complying with the provisions of Article 26(2) of the 1995 Constitution which provides as follows:

"No person shall be compulsorily deprived of property or any interest or right over property of any description except where the following conditions are satisfied-the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health: and the compulsory taking of possession or acquisition of property is made under a law which makes provision for-prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and a right of access to a court of law by any person who has an interest or right of property."

The 1998 Land Act deprived land owners many of whom had invested their savings into land were suddenly deprived of their interest and right in their land for an inadequate compensation of Shs. 1,000 per year not paid prior to its being taken, and the taking was not necessary for "public use or in the interest of defence, public safety, public order, public morality or public health"

The Land Act also imposed the above paltry fee irrespective of the size, location or use of the land. This does not make economic sense at all.

This issue is very important to the people of Buganda, because it directly affects the land returned to the Kabaka under the "Ebyaffe" statute in 1993. Although on paper, the Kabaka holds 350 square miles of land which were

returned to him, in actual fact, he cannot use this land, nor does he benefit from it. The issue does not affect the Kabaka alone. It also affects the people of Buganda and Uganda, whether they are mailo or leaseholders. Since the early 1920s, the safest form of investment for an ordinary Muganda has always been land. Land is a valuable and sacred asset in Buganda, hence: Ssabataka, Bataka, Butaka and so on.

Objection to the extremely unfair rent of Shs 1,000/= irrespective of size or location or economic activity on the land is not in disregard of tenants' or occupants' rights. Throughout our history, the Busuulu and Envujjo laws found an appropriate compromise between landowners and tenants. These laws gave sufficient protections to tenants and squatters, while at the same time giving protection to the landlord. In this manner a viable economic relationship between the two groups emerged. The current Land Act upset these relationships and is not workable.

It is possible to achieve the public interest objectives of the Land Act in other manners that do not violate fundamental freedoms and property rights guaranteed under the Constitution. The Constitution needs to be revisited on the questions of "bonafide" and "lawful occupants" having regard to the rights of landholders. If the Constitution clarifies the issue, then the Land Act can be adjusted accordingly. The issue of the Land Act is raised here because it emanates from the above constitutional provisions.

Mailo ownership of registered land means holding title to it in perpetuity and thus it is similar to freehold. Mailo exists in western and central Uganda, with an estimated 9 per cent of the land mass being owned in this way. The mailo system is unique to Uganda. The Kabaka Mailo was land given to the king which is now owned by the Buganda Land Board. Official Mailo was land given to certain officials and it is now also owned by the Buganda Land Board. Private Mailo was land given to around 1,300 people and institutions such as churches between 1900 and 1908. This land is still owned privately, complete with longstanding tenants, and confusion over the differences between

owner and tenant rights has led to conflicts Bukerere is one place where land is still owned by Mailo.

Mailo land owners have the same rights as freehold land owners, but they must respect the rights of lawful and Bonafide occupants and Kibanja holders to occupy and live on the land. (Section 3 (4) of the Land Act). Buganda Land Board operations are largely based on Mailo land and there have been some divergent voices over this land because many people find it hard to understand how Mailo land works.

Buganda's land falls in the category of Official Mailo land which means it cannot be sold entirely but can accommodate bibanja holders as well as lease holders. Hereunder are a few descriptions of key terms used on this land tenure. Kibanja holders; Persons who had settled on the land in Buganda as customary tenants with the consent of the Mailo land owner under the Busuulu and Envujjo Law, 1928.

A Kibanja holder holds an equitable interest in Mailo land which can be transferred with consent of a registered owner. It is worth noting that Kibanja is peculiar to Mailo land found mostly in Buganda Bonafide occupant; A Bonafide occupant is one who, before the coming into force of the Constitution 1995

(a) 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

(b) Had been settled on land by the Government or an agent of the Government, which may include a local authority. Lawful occupant; This means a person who entered the land with the consent of the registered owner, and includes a purchaser.

For this article we will go with this definition though a lawful occupant is also one who occupies land by virtue of the repealed— (i) Busuulu and Envujjo

Law of 1928; (ii) Toro Landlord and Tenant Law of 1937;(iii) Ankole Landlord and Tenant Law of 1937.

Tenant by occupancy; These include bonafide and lawful tenants. They are considered tenants of the registered owner of the land which they occupy and are required to pay annual ground rent. **(Sections 1 and 31 of the Land Act).** Most people in Buganda are tenants by occupancy and are required to pay Busuulu. a. Rights and Duties of Tenants by Occupancy and Kibanja Holders

1. Tenants by occupancy have a right to occupy land under the laws of Uganda.

2. They have the right to enter transactions with respect to the land they occupy with the consent of the registered land owner, which should not be denied on unreasonable grounds. (Section 34 of the Land Act).

3. The law strictly requires tenants by occupancy to give the landowner first option where they wish to sell their interest and vice versa where a land owner wants to sell the land. This must be on a willing buyer willing seller basis. (Section 35 of the Land Act).

4. Where a tenant by occupancy or Kibanja holder sells their interest without giving the land owner first option, he or she commits an offence and loses the right to occupy the land. **(Land (Amendment) Act 2010).**

5. A person who buys registered land which has tenants by occupancy must respect and observe their rights.

6. He or she must not evict them except if he or she obtains a court order of eviction for non-payment of the annual nominal ground rent. **(Section 32A of the Land Act as amended in 2010).**

7. Similarly, any person who buys registered land in Buganda must observe the rights of Kibanja holders on the land.

8. Tenants by occupancy and Kibanja holders can also register a caveat at the Registry of Lands where they have reason to suspect that the registered landowner intends to enter a land transaction which will affect their rights and interests. **(Section 139 of the Registration of Titles Act)**.

One can only secure their land by knowing the tenure he or she is under, his duties and responsibilities on the said piece of land.

Mailo Land in Buganda is managed by the Buganda land Board. Once upon a time, there was a public body which went by the name Buganda Land Board. This body was set up under Chapter X11 of the 1962 Constitution to manage Public Land in Buganda. This public body had its roots in the famous 1900 Agreement (Uganda/Buganda Agreement) under which various chunks of land of varying sizes were grabbed from natives and given away to various individuals, chieftains, and religious groups. The chunks of land given away were neither surveyed nor did they have any known tenancy category in the Kiganda Culture. The colonial authorities eventually regularised this land grabbing and in 1908 enacted a legislation known as The Land Law of 15th June 1908. This law created two tenancies. Under Section 2 thereof, a tenancy known as Mailo was created. The section specifically stated to hold land in a manner described in that section "*will be known as holding Mailo, and land of this description will be called Mailo*". Section 5 created a second tenancy which was described as that land which a Chieftainship shall hold for the time, he shall hold the chieftainship. It stipulated that he shall be entitled to take all the profits from that land but when he leaves that chieftainship, the successor chief will take over the land. In the words of Section 5(c) "*to hold land in this manner, will be called to hold official mailo.*" The actual demarcation of both the mailo and the official mailo tenancies was not done until five years later when the Buganda Agreement (Allotment and Survey) Law of 1913 was enacted.

Since the mailo was under the control of individuals, or bodies to which it was allocated, it was necessary to put in place a statutory public body to

manage the official mailo and herein lay the origin of the Buganda Land Board. The Chieftainships holding official mailo were diverse, covering Saza Chiefs, Gombolola Chiefs, land held under Chieftainships of the Katikiro, Omulamuzi, Omuwanika and others described in the 1900 Agreement and elsewhere in the subsequent laws as official mailo. Indeed, even the chunk of land allocated to the Kabaka under the 1900 Agreement was converted to official mailo under Section 2(b) of the 15th June 1908 Land Law.

Who owns Buganda's 9,000 Sq. Mailo land, is it Kabaka or?

President Museveni meets Kabaka Ronald Muwenda Mutebi II and his entourage at State House Nakasero on Sunday, August 22,2021, discussed the position of the Buganda Mailo land.

The locus you need to know unto the Buganda Mailo Land.

I. The Buganda Land Board of today is different from the Buganda Land Board of 1962, which was statutory and constitutional in its establishment.

II. Can the Mengo establishment, with its voluntary character, be entrusted with managing land, half the size of Buganda itself?

The Traditional Rulers (Restitution of Assets and Properties) Act, Cap. 247 was enacted to restore traditional rulers, assets and properties previously owned by him or connected with or attached to his office but which were confiscated by the State.

Buganda Land Board, a body corporate with perpetual succession and a common seal, was created by the Public Lands Ordinance, No. 22 of 1962. All former crown lands, including the 9,000 sq. miles of land (Mailo 9,000), were declared public lands.

Public lands in the federal state of Buganda were vested in Buganda Land Board in freehold. Buganda Land Board became the controlling authority.

Buganda Land Board was adopted and confirmed by the Constitution of Uganda, 1962.

The government and the traditional ruler of Buganda (the Kabaka)?

Was there a need for negotiation between government and the Kabaka with a view to reaching an agreement over the return of Mailo 9,000?

Within the meaning of Section 2 (7) of the Traditional Rulers (Restitution of Assets and Properties) Act is agreement still awaited between government and the Kabaka whereby government will surrender possession and management of Mailo 9,000 to the Kabaka?

Would Mailo 9,000, thereafter, be transferred to the Kabaka under Section 2 of the Act with effect from a date named in the agreement?

Article 239 of the Constitution (1995) limited the nature of land to be held and managed by the Uganda Land Commission. It holds land vested in or acquired by government.

The Constitution (1995) divested all other types of land from Uganda Land Commission.
There is no provision of law continuing to vest in Uganda Land Commission any rights, titles, estates and interests in other lands previously vested in the Commission immediately before the promulgation of the Constitution (1995).

Where did 9,000 miles go?

Under Article 241 of the Constitution (1995) the functions of a District Land Board are-(a) To hold and allocate land in the district which is not owned by any person or authority. The Uganda Land Commission by virtue of the effect of Articles 239 and 241 (1) (a) and (b) of the Constitution and the operation of Sections 49(a) and 59(a) and (b) of the Land Act, relinquished the freehold title to Mailo 9,000 which remained un alienated.

Accordingly, in any district of Buganda freehold title to any portion of un alienated Mailo 9,000 located in the district is now vested in the District Land Board.

On whose behalf is Mailo 9,000 held and managed?

Mailo 9,000 was, in 1962, returned to Buganda Kingdom, vested in Buganda Land Board in Freehold, for the benefit of the people of Buganda.

Buganda Land Board carried out its functions on behalf of the Kabaka. Buganda Land Board was a Statutory and Constitutional body. Buganda, as a State, had a Federal Government.
Today, the Kabaka is a corporate sole, with perpetual succession and with capacity to sue and be sued, and to hold assets or properties in trust for itself and the people concerned (Article 246 (3)(a) of the Constitution (1995).

A traditional ruler does not have and cannot exercise any administrative, legislative or executive powers of government or Local Government. (Article 246 (3) (f) of the Constitution (1995).

As an institution, the traditional or cultural leader has a network of personnel to run the traditional or cultural responsibilities of the institution. As a cultural establishment it carries out functions to sustain and develop the institution.

Should the remaining un alienated portions of Mailo 9,000 spread out in the districts of Buganda, be centrally vested in the institution of the traditional or cultural leader of Buganda? Wouldn't the Mailo 9,000 be mixed up with Kabaka's official estate (the 350 square miles)? Can the traditional leader of Buganda manage, control and administer land almost half the size of Buganda itself? On the other hand, who is the ultimate owner of Mailo 9,000? The answer is: The people of Buganda.

How do they exercise their ultimate ownership and control? The answer is: Through the district land boards. How are district land boards accountable

to the people of Buganda in holding and managing Mailo 9,000? How do district land boards ensure that the people of Buganda benefit from their management and control of Mailo 9,000?

Occupation of Mailo 9,000

Under the Buganda agreement of 1900, the regents and the Ssaza chiefs, acting on behalf of the Kabaka, chiefs and people of Buganda, surrendered to Her Majesty's government the right of control over 10,550 square miles of land. Mailo 9,000 included land occupied by bakopi (peasants) by customary tenure. Bakopi became displaced when the areas which they previously occupied were surveyed and demarcated as Mailo land for individuals.

Bakopi were again displaced when, following the Crown Lands (Declaration) Ordinance, No.3 of 1922, it became unlawful for any African in the Buganda Province to occupy Crown Land outside a township or trading centre without a valid licence or lease.

Customary tenure, as a system of holding land, was not established or developed in Buganda in areas covered by Mailo 9,000. Until the Public Lands Act (13/1969) Mailo 9,000 was not yet occupied by customary tenure. Under the Public Lands Act (13/1969) it became lawful for persons to enter upon, hold and occupy by customary tenure any un alienated public land in a rural area in Buganda.

Buganda Kingdom had ceased to exist. There was no government in the kingdom to develop a local system for allocation, occupation and use of the public land comprised in Mailo 9,000.

Allocation of land and control and management of its use was never the function of the community, clans, lineages or families. The clans/elders in Buganda did not arrange any schemes of succession to land forming part of Mailo 9,000 left by any deceased persons.

No customary rules or practices were developed for resolving disputes relating to occupation of Mailo 9,000. There is no source of customary law or custom governing customary land tenure on Mailo 9,000.

Any African in the Buganda Province who wanted to occupy Crown Land in a rural area had to pay for an annual temporary occupation licence issued by District Commissioners at a rental (Busuulu) of Shs10. This was the position until 1967.

The Land Reform Decree, 1975, allowed the system of occupying public land under customary tenure to continue. Between 1975 and 1995 no person could occupy public land (such as Mailo 9,000) by customary tenure except with the permission in writing of the prescribed authority, the Sub- County Land Committee.

The Sub- County Land Committees were either non-existent or non-functional. However, there are supposed to be in existence sub-county registers of customary occupation of land comprised in Mailo 9,000.

After promulgation of the Constitution (1995), in areas outside Buganda a customary occupant, who is a citizen of Uganda, owns the land, and the land vests in him/her.

All Ugandan citizens holding land under customary tenure on former public land became customary owners thereof. They can acquire certificates of customary ownership or freehold titles. Does the same position hold in respect of peasant occupants of parcels of land comprised in Mailo 9,000?

Buganda Land Board was mandated to hold and manage Mailo 9,000 for the benefit of the people of Buganda.The functions of Buganda Land Board were to be exercised on behalf of the ruler (the Kabaka). The Republican Constitution, 1967 by Article 108 (5) confiscated Mailo 9,000 and vested it in Uganda Land Commission.

It is debatable if Mailo 9,000 was included among the assets or properties, previously owned by the traditional ruler or connected with or attached to his office, which were transferred to the traditional ruler of Buganda (the Kabaka) under Section 2 of the Traditional Rulers (Restitution of Assets and Properties) Act.

However, for more than 60 years between 1900 and 1962, Mailo 9,000 was not in the hands of Kabaka's establishment.

Buganda Land Board held and managed Mailo 9,000 for the benefit of the people of Buganda for only five years, between 1962 and 1967.

On the other hand, was Mailo 9,000 among the other assets and properties which remained to be sorted out between government and the traditional ruler of Buganda (the Kabaka)?

Was there a need for negotiation between government and the Kabaka with a view to reaching an agreement over the return of Mailo 9,000?

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Don’t district land boards allocate portions of Mailo 9,000 to “foreign” applicants despite the existing occupation by peasants?

On the issue of customary freehold recommendation, this was done way back during the National Land Policy Conference. It is pending implementation. The Uganda Land Owners Association, appeared before the Land Inquiries Commission on 25th September 2018, and in observation, some commissioners had a bias on land ownership, especially in the central region because of statements like; why is it that some people have a lot while others have little or nothing.They forget that by nature, there will be the "Haves and Have nots"! The same commissioners seemed not aware of the Busulu & Envujjo law. We shared its contents and recommended its reinstatement because it specified an area of a Kibanja and gave protection to a Kibanja holder's interest like his homestead. They rejected the proposal. The fact is that it is unfair for the laws of Uganda to talk about occupancy on land without declaring the size of a Kibanja. People claim bibanja of even 50 acres and above which is ridiculous. The understated presentations before the land inquiry commission were on. Bonafide cccupant. This means a person who was on land for 12 years and above by the 1995 Constitution. We all agreed that this provision is unfair and should be revised.

Land tribunals should be reinstated but under ministry of justice. These tribunals were under the land’s ministry.

In conclusion therefore the 9,000 squres mailo land does not belong to the kabaka, as described by the 1900 Buganda aggrement under article 15, Kabaka was given his share plus also others like chiefs etc.The share of milo land of Kabaka, need to be private because the Kabaka does have absolute rights to the other milo for which is termed as public or official milo land that was given to other people like chiefs.

Where does Buganda land board stand in as far as the 1900 Buganda agreement?

The Buganda Land Board under whose authority the administration of the official mailo was placed, was a statutory body of the Uganda Protectorate. It should be noted, that at the conclusion of 1900 Agreement, the Uganda Protectorate consisted of only one province, and that was the Buganda Kingdom. The 1900 Agreement in Article 3 envisaged “other Provinces” which were in future to be added to the Province of Buganda Kingdom and indeed when the final demarcations of the Uganda Protectorate were made, three other Provinces namely; the Western Province, the Easter Province and the Northern Province had all been created and the four formed the Uganda Protectorate which eventually emerged into the current independent Republic of Uganda. When the Uganda Protectorate gained Independence, the Constitution of the newly independent State of Uganda, so fit to dedicate the whole chapter on the administration of Public Land. This was Chapter XII and under Article 118, Public Land in Uganda was to be administered by three sets of bodies. The areas of Uganda which were administered under Federo units, public land was under Land Boards, while those under districts, public land was administered by District Land Board. The rest of Uganda, Land was administered by the Uganda Land Commission. The Buganda Land Board was under Article 118(3) recognised as the body administering public land in the Buganda Kingdom. [234] It should be clarified that the Public Land in Buganda under the Buganda Land Board went under the

[234] The monitor (Kampala) 7th October 2021 by James Kanengwa

nomenclature of official mailo. All the Statutory bodies namely administering Public Land in Uganda namely; Uganda Land Commission, Federal Land Boards and District Land Boards, were Constitutionally subject to the scrutiny of the Auditor General and therefore accountable to the Public.

The wind of change which blew across the Political terrain of the country swept away the 1962 Constitution and a new Constitution known as the 1967 Republic Constitution was promulgated. Like the 1962 Constitution, the 1967 one, also dedicated a whole Chapter on the administration of public land. This was Chapter XII and Article 108 under that chapterspecifically set out the Land Commission of Uganda as the body to administer all the public land in Uganda.For clarity, Article 108 (5) specified the various land entities vested in the Land Commission. These included every official estate held by a corporation sole by virtue of the provisions of the official estate Act and any land which immediately before the commencement of the 1967 Republican Constitution was vested in the land board of a Kingdom or a district. Thus, the public land which had under the 1962 Constitution been administered by the various Land Boards of federal units or districts were transferred to one single public body namely; The Land Commission of Uganda.

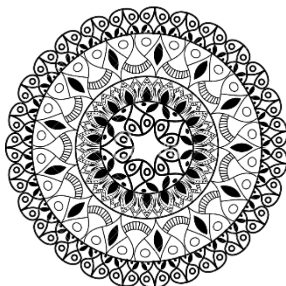
Thus, the official mailo under the Buganda Land Board was never confiscated; it was simply under the constitutional order of the day transferred to a public body under which the administration of all public land in Uganda was consolidated.The duplicity of giving different names to public land depending on its location in Uganda, for example, Buganda Kingdom where it had been called official mailo was streamlined with all other public land in the country under one body namely; The Uganda Land Commission.It was public land being managed by Buganda Land Board whose administration was transferred to the Uganda Land Commission. The 1967 Constitution like the one of 1962 created the position of an Auditor General for Uganda to which all public offices and institutions had to submit for scrutiny and were therefore subject to public accountability. For avoidance of doubt, the 1967 Constitution, created Article 126 for the

continuance in force of the system of mailo to emphasize the difference from the public land which had been called official and which by the constitution had been streamlined by being moved from the Buganda Land Board to the Uganda Land Commission.

The current Buganda Land Board is not a successor in title to the Buganda Land Board of the 1962 Constitution. It is not a statutory body and has no mandate to administer any public land. Its legal status going by its instrument of registration is that of a private limited liability company with one (1) shareholder. It has no accountability to the public and no queries can be raised by a public body on how the company is run. It cannot legally claim ownership of public property by virtue of the Traditional Rulers (Restitution of Assets and Properties) Act 1993. That Act having been enacted before the coming into force of the 1995 Constitution, must be construed with such modifications, adaptations, qualifications and exceptions which may be necessary to bring it into conformity with the constitution. The 1995 Constitution cannot be construed to resituate public assets to institutions which never owned them in the first place, from whom they have never been confiscated and by whom no official public accountability is exacted by the constitution. Public assets can only be managed by individuals or body of individuals or corporations which can be scrutinised by the Auditor General and therefore accountable to the Public.The Constitution has vested the administration of public land in the Uganda Land Commission, District Land Boards, or Regional Land Boards and all these public bodies are scrutinizable by the Auditor General and therefore accountable to the public.Under the 1967 Constitution, when all public land had been put under the Land Commission, any monies accruing from the Land so vested under the commission had to be paid to such authority as Parliament may prescribe. This mandate now falls to the three bodies indicated above which are constitutionally recognised to administer public land in Uganda. Buganda Land Board being a private limited company has no obligation to account for any monies or benefit derived from the Land under its administration.

It is in this scheme of things that it is imperative for Buganda Land Board Limited to return the land it is illegally holding and profiteering from unjustly. Public Assets cannot be in the hands of a private limited company. The handlers of the Buganda Kingdom, must be humble and realise the Constitutional mistake of holding onto Land Titles and assuming proprietorship where no law obtains confering ownership of public land to a cultural institution. This is the decent way to do it, and this action shall go a long way in restoring respectability of the cultural leadership. The ball is squarely in the hands of the sole shareholder of the Buganda Land Board Company Limited who has the unique historical opportunity to redeem the tremendous goodwill which surrounded the return of traditional/cultural rulers to the Uganda Political scene but which if left with no action taken shall surely disappear into oblivion.

CHAPTER ELEVEN



The Legality of the Buganda Land Board

When the Uganda Protectorate gained Independence, the Constitution of the newly independent State of Uganda, so fit to dedicate the whole chapter on the administration of Public Land. This was Chapter XII and under Article 118, Public Land in Uganda was to be administered by three sets of bodies. The areas of Uganda which were administered under federo units, public land was under Land Boards, while those under districts; public land was administered by District Land Boards.[235]

The rest of Uganda, Land was administered by the Uganda Land Commission. The Uganda Land Commission (ULC) is a semi-autonomous land verification, monitoring and preservation organisation, owned by the Ugandan government, that is mandated to document, verify, preserve and maintain land owned and/or administered by the government.

The Uganda land commission was established by the 1995 Constitution Art. 238. The Uganda Land Commission was created by the Ugandan Parliament in 1995. The mission of the ULC is to hold and manage all land in Uganda legally owned or acquired by Government in accordance with the

[235] The Buganda Land Board Charter

Constitution of Uganda. The Commission is also responsible for holding and managing [236]land owned by Uganda, outside of the country. However, that second mandate may be delegated to Uganda's Missions abroad.

The Commission is governed by a full-time Chairperson, assisted by up to eight part-time Commissioners.

The Commission's Secretariat is headed by the Secretary who is assisted by the Undersecretary. The Undersecretary heads three distinct functional units namely;

(a) Finance and Administration,

(b) Technical Support and

(c) Land Fund.

The board has a minimum of five members, with a representative from at least each county. One third of its members must be women. The upper limit of the board members is not specified. However, this composition of the boards is governed by the amount of work and resources available.

The various members are required to be above 18 years, Persons of unsound mind, they shouldn't be Members of parliament, convicted of an offence involving moral turpitude, or persons declared bankrupt and management of land.

The national and district polices and the customs or guiding principles of an area have to be born in mind. The duties include:

(i) Hold and allocate land in the district that does not belong to any person or authority,

(ii) Facilitate the registration and transfer of interests in land,

[236] The Land Act Cap

(iii) Cause surveys, plans, maps, drawings and estimates to be made,

(iv) Compile and maintain a list of compensations payable in respect to crops, building of a non-permanent nature after consulting the technical officers of the district,

In performing its duties, the District Land Boards are independent of any person or authority. They cannot be controlled, directed, used or influenced. District Land Boards are independent of the Uganda Land Commission. This independence gives them the powers to do any of the following:

Acquire by purchase or otherwise, rights or interests in land and easements;

Erect, alter, enlarge, improve or demolish any building or other erections on any land held by it;

Sell, lease or otherwise deal with the land held by the Board; and

Do and perform all such other acts, matters and things as may be necessary for or incidental to the exercise of those powers and the performance of the above functions.

The Buganda land board is a body that represents the kabaka and it is delegated to carry out land matters in Buganda this is stressed in the case of **Buganda Land Board v Wampamba** [237]The application was brought by chamber summons under Order 7 rule 11 and 19 of the Civil Procedure Rules SI 71-1 and Section 98 CPA for orders that the plaintiff's plaint be rejected and struck out for suing a non-existent party and for being misconceived, incompetent, frivolous and vexatious, bad in law as it does not disclose a cause of action and costs of the application.

Counsel for the applicant submitted that in paragraph 2 of the plaint, the applicant was referred to by the plaintiff/ respondent as a body corporate

[237] (Miscellaneous Cause 622 of 2013) [2014] UGHCLD 91 (20 February 2014).

capable of being sued. With such averment in the plaint, the burden of proof shifted to the plaintiff to prove the proper capacity of the defendant to sue and to be sued. Section 101 of the Evidence Act Cap 6 puts the burden of proof of a fact on the one who asserts that fact. Counsel submitted that a suit in a name of a non-existing plaintiff or defendant is bad in law and the same ought to be rejected by court. Counsel relied on the case of **Fort Hall Bakery Supply Co. Vs. Fredrick Muigai Wangoe**[238]That such a suit against a non-existent party cannot be amended to replace a party that has legal existence since there is no plaint at all. On this principle, counsel relied on the cases **of Trustees of Rubaga Miracle Centre Vs. Mulangira Simbwa HCMA**[239]and Auto Garage vs. Motokov[240].

A suit against a non-existent party is misconceived, incompetent and frivolous and the same ought to be dismissed, see also Justice Yorokamu Bamwine in **Bagamugunda Vincent vs. UEB (in liquidation) HCCS No. 400 of 2007.** [241]

It was held that, no evidence was adduced to show that the Buganda Land board is a body corporate which was incumbent upon the respondent as the plaintiff. The result is that the respondent sued a non-existing person. The suit is thereby bad in law and an abuse of court process. The court has through its own independent investigations confirmed that the Buganda Land Board is a business arm of the Buganda Kingdom which was instated constituted to manage the kingdom land and buildings.

Accordingly depending on where this land is situating, the right party to be sued should have been the Kabaka of Buganda. Indeed Article 246 (3) (a) of the Constitution provides that: “The institution of a traditional leader or a cultural leader shall be a corporate sole with perpetual succession and with

[238] [1959]1 EA 474.

[239239] No. 516 of 2005

[240][1971] EA 514

[241] www.ulii.com

capacity to sue and be sued and to hold assets or properties in trust for itself and the people concerned.

The case was therefore dismissed without costs.

However, in the case of **Kalemera v The Kabaka of Buganda & Anor** [242]Prince Kalemera H. Kimera (hereinafter referred to as the "Applicant") brought this application by Chamber Summons against the Kabaka of Buganda and the Buganda Land Board (hereinafter referred to as the "1st" and "2nd" Respondent respectively) under Section 98 of the Civil Procedure Act Cap 71 (CPA) and Order 41 rr.1, 2 and of the Civil Procedure Rules SI 71 -1(CPR) seeking orders that;

A temporary injunction both issue restraining the Respondents and/or their agents from further pressing any interest, rights, responsibilities in and /or ownership of land listed before court vide High Court Family Division MA No. 278 of 2015 arising out of O/S No.09 of 2014 as falling under the estate of the late H.H. Sir Daudi Chwa II until the final disposal of the head suit. Among others.

The application was allowed. An order of temporary injunction was granted restraining the Respondents or their agents/servants or persons claiming under them, from acquiring compensation payment from UNRA in respect of the Kampala – Jinja Expressway Project in respect of land originally registered under FC 18454 Block 273 Kyadondo, pending the determination of the head suit in HCCS No. 535 of 2017 or until court otherwise orders.

Conclusively therefore the Buganda Land Board (BLB), the kingdom's entity responsible for land matters, is an "illegal" outfit that profits a clique to the exclusion of majority of Kabaka's subjects.[243] The administrative seat of Buganda, runs BLB as a private company to profiteer from public land by

[242] **(Miscellaneous Application 1086 of 2017)**

[243] Mr Sam Mayanja, the State Minister for Lands

"illegally" charging for issuance of Kyapa Mungalo (titles on Kabaka's land). "BLB is an agent that acts for the Kabaka (Muwenda Mutebi).

Uganda Land Commission and district land boards have the power to recommend or issue land titles and Buganda's lease and titling offers are not backed by law." Buganda whose lease on Mailo land expires, to renew and convert it to freehold and stem evictions".

Therefor the Buganda land board is just there to administer the property share of the Kabaka of Buganda as per 1900 Buganda agreement entail but not on the whole mailo thus commits ultravires. Thus, the work of giving out titles and disputed it has to be given to the Land commission or district land board

Legal variation of mailo land

Until 1975, there were four types of land tenure systems in Uganda Mailo land which were private and private, Freehold, Leasehold and customary tenure system. Following the land reform decree of 1975, all land was declared as belonging to government, people being allowed to settle wherever they wished for as long as they could make use of the land effectively. However, the tenure systems were restored by 1995 Constitution.

This form of tenure resulted from allotments made out of the 1900 Buganda Agreement commonly known as the Uganda Agreement. By article 15 of this agreement, the total land area of Buganda was assumed to be 19,600 sq. miles and was divided between the *Kabaka* and other notables in the protectorate. The royal family of the Buganda kingdom and high-ranking officials received 958 sq. miles as private mailo or official estate 1000 chiefs and private notables each received 8 sq. miles which totaled up to 8000 sq. miles, 92 miles went to existing governments. The 1500 sq. miles of forests, uncultivated land and what was termed wasteland were vested in the queen of England as Crown Land. The local peasants or cultivators previously settled on land were not recognised. They were only later recognised after they rioted in 1927 by the

Busuulu and Envujjo law which specified the rights of the Mailo owners and the peasants who had now become tenants.

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Customary land tenure system

Customary tenure means a system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons. It is a system of land holding governed and regulated by customary principles and in majority of cases sanctioned by customary authorities' council of Elders, village chiefs and village headmen. The owner may be an individual or a community, in the latter case, the land is then said to be held on a communal basis with the exception of Buganda and a few areas in Ankole, Toro and Bunyoro, where titling took place. Most of the land in Uganda is held under customary tenure. This tenure varies according to the ethnic group and region of the country. In some parts of the country, ownership of land is mainly communal, based on clans, with individual usufructuary rights over specific plots. But generally, there is a steady evolution change towards individual ownership. This trend is more

pronounced in the densely populated districts in the southern and Eastern parts of the country less so in the Northern and North-Eastern parts.

Customary land tenure is governed by rules generally accepted as binding by the particular community meaning that any person acquiring land in that community shall equally be bound by those rules. However, the application of any customary rule is subject to the rule not being repugnant to natural justice, equity, and good conscience, or being incompatible either directly or indirectly with any written law. That's why in **karegyesa and others D.R14** the high court declined to enforce an alleged kikiga custom, which said that land formerly cultivated by a child's mother upon her death automatically passes to the children and does not revert to the husband. Karokora J, as he then was, said that such a custom was repugnant to natural justice, equity and good conscience because it deprived the man, as head of the family, of his power to control the family properly.

Mailo Tenure System

Mailo system of land tenure means a form of tenure deriving its legality from the constitution and its incidents from the written law which involves holding registered land in perpetuity subject to the rights of lawful or bona fide occupants. In this case, a lawful occupant means a person occupying land by virtue of the repeated Busuulu and Envujjo law of 1928, the Toro landlord and tenant law of 1937, Ankole landlord tenant law of 1937, a person who entered the land with the consent of the registered owner, and includes a purchaser, or a person who had occupied land as a 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.

A Bona fide occupant means a person who before the coming into force of the constitution; 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. The system enhances the economic value of land as

it can be offered as security for loan facilities. This sense of security enjoyed by owners of mailo land encourages them to make long term investment in the land and to take proper care of the land in which they have permanent interest. It is further argued that the tenants had security of tenure because they could not easily be evicted from the land as long as they paid their dues. However, it is highly contended by opponents of mailo tenure that the system is unfair in that those who originally got the land did nothing to deserve it. Furthermore, the owner of the mailo land is not compelled to put the land to the best economic use.

Leasehold Tenure System

Leasehold tenure is a form of tenure created either by contract or by operation of law, the terms and conditions of which may be regulated by law to the exclusion of any contractual agreement reached between the parties, under which one person, namely the landlord or lessor, grants another person, namely the tenant or lessee, exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending usually but not necessarily in return for a rent which may be for a capital sum known as a premium or for both a rent and a premium but may be in return for services or may be free of any required return; under which both the landlord and the tenant may, subject to the terms and conditions of the lease and having due regard for the interests of the other partly, exercise such of the power of a freehold owner as to ore appropriate and possible given the specific nature of a lease hold tenure.

Lease hold tenure guarantees regulatory role of the state in land transactions and on the other hand it guarantees everyone the right to apply for and be granted land in accordance with one’s development needs. However, it gives too much power to the state in land transactions. This intervention distorts the land market and leads to corruption.

Free Hold Tenure

Free hold tenure is a form of tenure deriving its legality from the constitution and the incidents from the written law involve the holding of registered land in perpetuity, using and developing the land, taking and using any and all produce from the land, entering into any transactions in connection with the land including but not limited, to leasing, mortgaging or pledging, sub dividing and disposing of the land to any person by will. Free hold tenure gives individuals maximum protection from the arbitrary and un warranted interference by the government. Free hold further relieves the government of the burden of monitoring the use of land like in lease hold which is sometimes subject

In Uganda, land is very a critical factor; it is the most essential pillar of human existence and national development. It is the basic resource in terms of the space it provides, the natural resources it contains and supports, and the capital it represents and generates. It is a capital asset which can be used and traded, a critical factor of production and an essential part of national patrimony. 2It is also a key factor in shaping individual and collective identity through its history, cultural expressions and idioms with which it is associated.

Land use is the nature of utilisation under which land is put or the possible kinds of uses under consideration for the future. It is the exploitation of land for agricultural, industrial, residential, recreational, or other purposes. Historically most countries have a laissez-faire attitude toward land use, for this reason the land has been exploited at will for economic gain. Only in recent decades have states realized that land is not a limitless commodity. Increasing population and industrial expansion have generated urban sprawl, with thousands of square miles of open space being taken over annually for housing and business. As a result, congestion and widespread pollution, contamination of the environment as a result of human activities (land use), along with depletion of water and mineral resources and destruction of wilderness and wildlife habitats, have become increasingly severe thus the

need to protect the quality and continuity of life through conservation of natural resources, prevention of pollution, and control of land use.

Uganda owes the current system of land use and management to evolution of ownership and access triggered by the significance attached to land as a primary production means. The total surface area of Uganda is about 241,500sqkm \ of which 194,000sqkm is land and the rest open water and wetland. 84,000sqkm of the land which accounts for 43% is rangeland and 24.4% as marginal lands. Close to 88% of Ugandans live in rural areas and their livelihood depend on land either as pastoralists or farmers practicing subsistence agriculture. Agriculture is the major land use form that employs close to 80% of the population and responsible for almost half of Uganda's Gross Domestic product. Other forms of land use that significantly contribute to the economy include wildlife management, forestry, wetlands management and human settlement - industrial production, commercial enterprises and employment.

The people of Uganda depend on land and land resources to sustain their livelihoods; ranging from the food they provide; to the land on which their homes are built, to myriads of goods and services that are essential for their survival. They make this country habitable; purifying air and water, maintaining biodiversity, decomposing and recycling nutrients and providing many other critical functions. Utilization of these land resources forms a root of Uganda's economy and provides the majority of employment opportunities in the country and thereby determining the future of this country. This calls for the proper assessment of the use on which land is put so that the most suitable option be promoted. Further, the economic objectives demand that land be put to its productive, economically viable and sustainable use since economic costs of mismanagement of land will exert a heavy price on Ugandans especially the rural poor.

Land comprises all elements of the physical environment to the extent that these influence the potential land use. Land refers to soils, land forms,

geology, climate and hydrology, the plant cover, and fauna including insects and microorganisms. The nature of utilisation under which land is currently put or the possible' kinds of uses under consideration for the future is referred to as land use. However, despite all this endowment, Uganda faces a number of challenges

arising out of a rapidly growing population, the country's quest for development and poor land use planning practices. These have put pressure and competition on the scarce land resources and resulted in inappropriate decisions in the allocation of land use activities. These are manifested, among others, in form of land degradation, loss of vegetation cover, loss of biological diversity, wetland degradation; pollution; uncontrolled urban development; conflicts over land use and reduced productivity.

Such problems would not be elusive to attain if land management was premised on legislation emphasizing sustainable and optimal use of the land. However, Uganda has just approved its first defined or consolidated National Land Policy this year, since the advent of colonialism Instead the country had a Land Use Policy adopted in 2007, which only focuses on use of the land resource without addressing the main problem of how land is owned-the tenurial problem. The Land Use Policy does not provide for proper land use planning because this would be based on the tenurial aspects of a comprehensive Land legislation that is lacking. Consequently, Uganda is faced with problems of inadequate land use planning and enforcement of land use legislation.

Further land use and its management lie in many and different institutions, each managing isolated portions and aspects that are un coordinated and in competition with one another for recognition and resources hence creating critical overlaps in institutional responsibilities and insufficient collaboration among public sector institutions and agencies. It is also governed by sectoral legislation whose tenets are not harmonized. ' In the first decade of the independent Uganda, there was not much radical transformation in the land tenure and management regime save for the Public Lands Act which

provided for protection of customary land right, thus only protected the interests of customary land holders. The 1975 Land Reform Decree introduced fundamental changes in the land question. All land in Uganda was declared Public

Land and land were vested in the Uganda Land Commission. Whereas all freeholds interests were abolished and mailo land converted to leaseholds, customary occupants held their parcels of land at sufferance. This allowed people to at least access any piece of land and in effect the decree transferred all land to the state.

People using the land only did so, on a lease basis issued on conditions specifying the purpose for which the land may be used and for a period of time limited to 49 years. Under the leaseholds land users only received usufruct rights from the state and to the customary occupants with no legal titles to the land they occupied, the decree implied even serious consequences. Attempts have been made to radically streamline the land management regime and land use in Uganda; First it was the 1995 Constitution and later the 1998 Land Act. The two legislations try to reinforce each other, though management has remained under the mandate of different institutions thus making it evident that land related policies have remained inconclusive on the key aspect of land use. This creates a problematic situation for the land use institutional managers because the Land tenure and Land User Rights This is a mode of landholding/ together with terms and conditions of occupancy. It is therefore about the "bundle of rights"88 held and enjoyed in the land resource. These bundles of rights are relative in terms of the degree of their enjoyment and they translate into the manner of use of land1 the duration of use or occupancy as well as relocation of the rights may be through transfer1 lease/ sublease1 bequeathing and licensing. The essence of land tenure systems are the ways in which land rights1 restrictions and responsibilities people have are held. The Ugandan Constitution/ 19951 defines the current land tenure systems to comprise four systems of land tenure including; freehold1 leasehold1 mailo and customary.

Land tenure systems differ across Uganda and tenure practices are a mixture of traditional practicer colonial regulations and post-colonial legislation. Land tenure refers to the way land is owned1 occupied1 used and disposed of within a community. A properly defined and managed land tenure system is essential to ensure balance and sustainable development. Until 1975 there were four types of land tenure systems in Uganda1 customary1 mailo1 freehold and leasehold/ (NEMA1 1996). Tenure systems are not confined to particular farming systems and may encompass several farming systems. Customary tenure is found all over the country1 but predominates in the northern and eastern cereal-cotton-cattle farming system1 as well as the West Nile Cereal-cassava-tobacco system. Mailo tenure1 dominant in the Buganda region/constitutes the intensive banana coffee system1 but customary1 freehold and leasehold tenure are also found in this farming system. Customary1 freehold and leasehold tenure is also prevalent~ in the Western banana-coffee-cattle system and the Kigezi Afro Montane system.[244]

Customary land tenure is the most dominant in Uganda, whereby land is owned and disposed of in accordance with customary regulations. Specific rules vary according to ethnic groups and regions. This tenure system also exists on its own as communal land ownership. Customary land tenure was the only land tenure system in operation before colonial rule in the late 19th century. Up to the time of the Land Reform Decree in 1975, land held under

[244] E.M Tukahirwa. (1992) Uganda Environmental and Natural Resources Management Policy and Law: Issues and Options, val. 11. Documentation. Thomas Grey, 1980. "The Disintegration of Property" in Property, J. Ronald Penncok and John W. Chapman eds. NOMOS Monograph No. 22. The Constitution, Article 237, Paragraph 3. 90 M. Kamanyire. (2000). Sustainability Indicators for Natural Resource Management & Policy. Working Paper 3; Natural Resource Management and Policy in Uganda, Overview Paper. EPRC. ISBN: 1

customary tenure constituted about 75% of all the land in Uganda (EPRC, 1997). Principal categories of customary tenure are:

Communal/tribal tenure where ownership of land occupied by the community or tribe is vested in the paramount tribal leader as owner, who holds it in trust for the entire group or clan/family tenure where land is vested in the head of the group as owner or trustee for the entire group.

Customary tenure does not recognise individual ownership of land. It only recognises the rights of the individual to possess and use land subject to superintendancy by his family, clan or community. The disadvantage is that it does not encourage record keeping, often making it difficult to resolve land use disputes.

Environmentally the main disadvantage is that it generates little personal interest in the status of land resources (tragedy of the commons) leading to mismanagement and degradation (NEMA, 1996).

Mailo tenure was introduced as a result of the 1900 Buganda Agreement. Under this Agreement, 9000 sq. miles of land were divided between the Kabaka, other notables and the Protectorate government. This area represented half the estimated area of Buganda. The basic unit of sub division was a square mile, hence the name mailo. Initially there were two categories, private mailo and official mailo. In the case of official mailo, grants of land were attached to specific offices in the Buganda government. They could not be subdivided or sold but passed intact from original office holder to his successor. In private mailo, the owner held rights in the land akin to those of freehold and could dispose of land as he wished.

Official mailo land was transformed into public land in 1967, with the abolition of kingdoms. Under this system land is held in perpetuity and a certificate of title is issued (EPRC, 1997). The allocation of original mailo holdings took no account of the rights of peasant cultivators whose tenancy

rights were recognised under the customary land tenure that had existed before.

The principal advantage of this system is that it provides security of tenure thus allowing long term developments including those related to conservation. Absentee landlordism and lack of access by regulatory agencies are disadvantages that limit sound environmental management. Absentee landlordism encourages squatters on mailo land who have no incentives to ensure sustainable management of land they do not own. To the extent that mailo land is private, resource management regulatory agencies have limited authority over what happens on it. As such, most of the deforestation occurring in the districts of Buganda is on mailo land.

In freehold tenure, ownership is also in perpetuity and a certificate of title is issued. The system was originally established to address limited and specific requirements or requests such as by religious organisations. Freehold tenure was also granted by the Toro Agreement of 1900, Ankole agreement of 1901 and Bunyoro Agreement of 1903. The Crown Lands Ordinance of 1903 gave the British colonial administration power to alienate land in freehold. This system is found mainly in parts of eastern and western Uganda. It is argued that while land held under freehold tenure is not of the same magnitude as that under mailo tenure, it has a lot of similarities with mailo tenure and shares the same environmental management problems. Also, that due to population pressures in parts of Uganda where freehold tenure exists, land fragmentation is a common occurrence.

Land fragmentation is believed to have contributed to significant environmental degradation although concrete evidence is lacking. Leasehold is where land is held based on agreement between lessor and lessee. There are two types of leasehold tenure agreements, private leases given to individual landlords and official or statutory leases given to individuals and or corporate groups under public act terms. The advantage of the leasehold system is that the lessor can attach conditions to leases and has the right to revoke ownership in case of abuse. The main disadvantage is that leases are costly and

cumbersome to obtain and so far, leases awarded have not addressed environmental concerns.

The different land tenure systems affect land use and land management in a variety of ways and have environmental impacts too.

Access to land

Land utilization relates closely to the different tenure systems because the purpose, interests and rights of the parties involved impact greatly on the activities and innovations the occupants and or owners undertake on the land. The most developed estates in Uganda are in urban areas and in freehold and leasehold systems. The main reason is that relatively the holders enjoy unquestionable and unimpeded user rights fully backed by the law. Hence the holder can inject any amount of money so as to develop the land. The implication here is that the majority of the populations have resorted to trying access land for cultivation and grazing, a condition that has culminated into excessive and sometimes unwise utilization and subsequent degradation.

Property Rights

These are economic interests supported by the law. In real estate law, property rights are referred to as bundles of rights because ownership of a parcel of real estate may embrace a great many rights, such as the right of occupancy and use, the right to sell property in whole or in part, the right to bequeath, the right to transfer by contract for specified periods of time, and all other legally sanctioned benefits to be derived by occupancy and use of that piece of real estate.

Rights to private property, therefore, include the right of use, the right of exclusion and the right of transfer. However, private property has no uniform meaning. In some instances, as defined above, property refers to real estate. In other context; it refers to rights in good against a particular person or the world under contract. Property can refer to remedy or restoration or

injunction, as opposed to damages. Still other accounts of property are result oriented. It can refer to a means to promote allocative efficiency or to protect individual security and independence.

Condominium Property

A condominium is one of a group of housing units where each homeowner owns their individual unit space, and all the dwellings share ownership of areas of common use. Units normally share walls, but that is not a requirement. The main difference in condos and regular single homes is that there is no individual ownership of a plot of land. All the land in the condominium project is owned in common by all the homeowners. Usually, the exterior maintenance is paid for out of homeowner dues collected and managed under strict rules. The exterior walls and roof are insured by the condominium association, while all interior walls and items are insured by the homeowner. In summary it is a form of property ownership in which each owner holds title to his/her individual unit, plus a fractional interest in the common areas of the multi-unit project. Each owner pays taxes on his/her property, and is free to sell or lease it. And in essence condominiums, are apartments that are individually owned. Common elements generally include walkways, driveways, lawns and gardens, lobbies, elevators, parking areas, recreational facilities, storage areas, laundry rooms, stairways, plumbing, electrical systems and portions of walls, ceilings [245]

The Uganda Legal Information Institute (ULII); Legal Opinion on Condominium Property.

Floors, and other items. Parts of the common elements may be designated for the exclusive use of one or more of the individual unit owners, in which case these are called limited common elements or limited common property. In

[245] T. Grey. (1980). "The Disintegration of Property" in Property, J. Ronald Penncok and John W. Chapman eds. NOMOS Monograph No. 22.

other words, they are limited for the use only of specific owners. Examples would include parking spaces, roof gardens, balconies, storage lockers, and front and back yards. In Uganda Condominiums are becoming more popular because of better land utilization, price competitiveness, built-in amenities, and convenient locations and designs. The condominiums are important for; better land· utilization, price

competitiveness, built-in amenities, and convenient locations and designs, condominium ownership appeals to active young singles, couples without children, couples with children, and pre-retirement and retired couples or singles.

However, in Uganda, the implementation of the Condominium property law (CPL) is still lacking yet this law provides for division of buildings into units and common property; individual ownership of those units by issuance of certificates of title; ownership of common property by proprietors of units as tenants in common and the use and management of the units and common property and for other connected matters.

Further, the Condominium law is vital for enhancing the viability of housing finance. Although few private developers and public corporations have been selling apartments in high rise buildings, there is no much emphasis on this law for such transactions. For example, the sale of multi- family houses by the national housing and construction corporation was preceded by the enactment of the condominium law in 2001.

In Uganda, land continues to be a critical area, and an essential pillar for both human life and national development. The land question in Uganda has origins in the legacy of colonialism, wherein historical injustices deprived some communities of their ancestral lands that resulted in multiplicity of tenure regimes, multiple rights and interests overlapping on the same piece of land, and a heritage of evictions, arbitrary dispossession, land disputes and conflicts. The major land reform was attempted in 1975, with 'The Land Reform Decree' that declared all land to be public and vested the State with

the power to hold land in trust for the people of Uganda, thus all land being administered by the Uganda Land Commission. It also abolished the Mailo system of land tenure and converted them into leaseholds of 99 years. In 1995 a new Constitution was

enacted, which reinstated the old tenure systems and gave land ownership back to the citizens of Uganda. Recently, the Government Uganda approved the National Land Policy, which among other things, seeks to re-orient the land sector in national development by articulating management co-ordination between the land sector and other productive areas to enhance the contribution of the sector to social and economic development of the country.

PRE-COLONIAL

It is difficult to identify a single land tenure pattern for Uganda as a whole for this period because before colonial rule, land tenure in Uganda consisted of a number of customary tenure systems, both sedentary and pastoralist. In general, customary tenure in sedentary agricultural communities revolved around kings and chiefs who allocated land to clans and community households according to The Uganda National Land Policy, 2013, Gazetted on the 30th August, 2013. Ministry of Lands, Housing and Urban Development. General Notice No. 504 of 2013; In the Uganda Gazette, Vol. 0/I No. 43 of 30'h August, 2013 28 customary norms and practices. Every person and household had the right to access sufficient land for their subsistence; this right came either from the lineage or clan head or from the chief to whom the person pledged allegiance. Transfer (i.e., rent, sell, and sometimes inheritance) rights were not granted-land not used or wanted reverted to the King or chief. Since most lineages in Uganda are patrilineal, when land was handed down within a family, it passed from father to son.

In the semi-arid regions of the country, access to land by clans and households was generally based on agreements with other clans that permitted the movement of households and cattle during the year to areas where pasture

and water were available. Thus, households did not seek access to a piece of land in particular community or lineage on which to build shelter and plant crops, but rather access to lands along the traditional cattle corridor. Customary tenure recognized various rights of the individual to possess and use land subject to sanction by the family, clan and or community. Therefore, the individual land holder had the right under customary tenure to utilize land as thought best, res~ or lend a piece of land for temporary purposes, pledge crops on land but not land itself. Sale of land was subject to the approval of the family. The clan or family had the right to settle land disputes within the area of control, exercised the right to buy any land offered for sale by its member; as regards utilization, the general community had the right: to graze communally over the whole area, free access to salt licks, watering of cattle at running or open waters and access to water from springs and other common rights.

In the central (Buganda), land was by and large held by the Kabaka on behalf of and in trust for the people. The Kabaka effectively undermined the power of the clan heads largely by means of the power to appoint chiefs of various grades who had both administrative and military duties. In return, chiefs also got the right to use the land and produce of the peasants under them. At least four categories of rights of control over land could be identified:

Rights of Clans over land (Obutaka), these rights accrued to heads of clans and sub clans who were known as bataka. The particular land involved was viewed as clan or ancestry landr the traditional seat of the head of the clan or sub-clan who determined a right to reside there but had a right after their death to be buried on such lands. Butaka estates were held not in private ownership but in semi-collective tenure where a mutaka could allocate the right to use land and receive profits from the land with consent of the clan. This tenure was not alienable to foreigners and succession was passed to the successor in the role of mutaka rather than the descendants of a particular mutaka.

Rights of the Kabaka and the Chiefs (Obutongole) the Kabaka held paramount title to all land in Buganda. He granted land to his great chiefs (bakungu) who were few in number and to his lesser and more numerous chiefs called batongole. These rights in land are collectively described as· obutongole. The grantees had rights of use in the estates attached to their chiefly offices. These rights were good during the continuance in office of the particular chief. The batongole exercised the same rights towards the peasants on their lands as those exercised by bataka with regard to the tenants on butaka land. Individual hereditary rights (Obwesengeze)r these were individual rights over land stemming from long and undisputed occupation and1 or original grant by the Kabaka. They could be acquired by a chief or individual tenant. This type of tenure carried no political rights or duties like butongole tenure1 and unlike butongole tenure1 if the holder died the land passed on his to heir. The holders were not subject to labor obligations like peasants. [246]

Peasants' rights of occupation (Ebibanja), the peasants formed the majority of the population. The peasants were free to choose a chief under whom to live. A peasant got a piece of land for his undisturbed occupation under a chief of his choice who would organize for his security and general welfare while the peasant was to respect his chief, render him some tribute and occasionally work for him.

However, although the peasant performed, would still be subject to being evicted from his kibanja/plot by the chief at any time. His rights of tenure, therefore, depended on his maintaining the cordial social relation and correct political behavior.

Upon his death, a peasant's successor had a right to remain in occupation. It is therefore clear tha.t land relations in the pre-colonial period were, classified in a number of ways, some of which are unique to particular communities.

[246] Kisamba Mugerwa. Private and Communal Property Rights in Rangelands and Forests in Uganda.Makerere University of Social Research1 MUK.p. 3 30

Relations were based on feudalism where access to land was controlled by an oligarchy in which political power in society was exclusively vested. Security of tenure for land users was based on continuous loyalty to that oligarchy. The payment of tribute in the form of produce and gifts was therefore, a requirement as evidence of that loyalty. At the time of colonization, this system was fully established in and unique to the kingdoms of Buganda, Bunyoro, Ankole and Toro. Systems of land tenure were based on territorial control in which access to land resources was governed by a complex network of reciprocal bonds within families, lineages and larger social units commonly called chieftaincies to protect and guarantee individual and community rights as prescribed by custom. As long as such bonds remained, any individual or group of individuals could secure access to the resources of that community.

Further, for the systems of land tenure prevalent in the non-feudal sedentary communities, land relations were defined not only by the network of social relations prevalent in each community, but also by the specific uses to which parcels of land occupied by individual families, clans or lineages were put. Tenure relations therefore recognized individual rights as well as community obligation in virtue of access to such rights. The radical title to land was always vested in the community as a corporate entity rather than in the political organs through which control of the territory or the resources of the land was exercised or mediated.

Colonial Period

The colonial state in Uganda was built on the official philosophy of protectorate and indirect rule rather than colony, territory or direct rule. The dominant economic structure chosen was one of small peasant agriculture under the prevailing customary tenure since it was considered dangerous to modify customs as arbitrary imposition of change would cause a total failure of effortS to administer the local indigenous population. Therefore, in order to appease the local chiefs and get local political allies in the effective

administration of the country, the colonial administration introduced polices which could accommodate customary tenure.

Besides, the preservation of customary tenure, mailo tenure and leasehold tenures were introduced.

Mailo land

By virtue of the 1900 Buganda Agreement, large extensions of land called mailo estates were conferred to chiefs and other notable personages. Mailo land was divided into two categories: Official Mailo which was grants of land attached to specific ·offices in the Buganda local Government; these lands could neither be sub-divided or sold and instead passed intact from the original land holder to his successor. These were abolished in 1967 and became public land.

Private Mailo were estates allotted to some 1,000 chiefs and private land owners, equivalent to 8,000 square miles of land. Approximately half of Buganda (more than 8,000 square miles) became formally privatized, despite the fact that these mailo estates were already settled by smallholders under customary tenure, whose usufruct /land use rights were not legally recognized. By 1963, it was estimated that the original 4,138 estates had increased to 89,089 estates as a result of sub-divisions through inheritance and sales. 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.

Though tenants paid rent and labour services, the mailo owners were considered lords of their area and their tenants were their servants; even though mailo owners permitted them to retain possession of the land they were occupying, this effectively converted them from customary land users into legal tenants on private property. This laid the ground for the genesis of multiple rights on the same piece of land, which is a defining characteristic of land relations as evidenced by evictions and a land use impasse between landlords and tenants in contemporary Uganda. In 1928, a law that provided

the tenant cultivators with security on the land and set a limit on the fees which they are required to pay to the mailo owner was enacted. This law acknowledged use rights by making it very difficult to evict tenants. However, the result was confusion over who holds what rights. Formally, landowners had legal private ownership rights to the land, but their tenants felt they had permanent use rights to the land they held even though they paid rent. When the mailo owner sold land, for example, it was understood that, his or her tenants remained on the land. While tenants were legally operating on private property, actual practice was based on customary norms, and 'rents' did not actually reflect the asset value of land.

Freehold

The colonialist introduced three types of freehold, outside of Buganda: There were freeholds created under the crown lands ordinance of 1903 from crown land to individuals by the colonial Government. Very few freeholds were given under this ordinance and these attached development conditions which were carried forward by the Public Lands Act, 1969. The state however, reserved the right to enter and inspect the adjudicated freeholds. There were adjudicated freeholds converted from customary tenure pilot schemes in the districts of Kigezi, Bugisu and the Kingdom of Ankole. In these schemes there was surveying and actual registration of existing customary holdings.

In some areas, consolidation of fragmented plots was also carried out. And finally, the native freeholds (similar to mailo in Buganda) which were grants of land under the Toro and Ankole Agreements of 1900 and 1901, respectively. Such land could only be transferred only to a native of the kingdom. The terms of the tenure were not freely negotiable but were fixed.

Leasehold

A leasehold estate is an estate created in land as a result of an agreement between a lesser and a lessee 'to the effect that the latter will enjoy exclusive possession of the land subject to a specified and certain duration in

consideration of a cash payment or otherwise called rent moving from the lessee to the lesser. In Uganda, there are two types of leases: private lease and leases out of public land. A private lease is granted by an individual landowner to an individual or organization. The public leases are given by a public authority.

Customary Land

For the rest of Uganda, all land not alienated under mailo, freehold or leasehold became crown /public land. All land users became, at the stroke of a pen, tenants at will of the State. After independence, under the Public Lands Act, 1969, any person was authorized to hold land by customary tenure without any grant, lease or license from any controlling authority provided the land was not in an urban area and had not been alienated into registered tenure.[247] As referred to in the case of Tifu Lukwago v Samwiri Mudde Kizza and Nabitakcr10 which cited the decision in Paul Kisekka Ssaku v Seventh Day Adventist Church111 where it was held that customary occupation without consent of the prescribed authority was unlawful

Two general customary systems can be distinguished; under the communal land system, primarily found in northern Uganda, the household is the primary owner of the land and may include extended members of the family. Communal land in Uganda includes gardens and pastures, grazing areas, burial grounds and hunting areas commonly known as common property regimes. User rights are guaranteed for farming and seasonal grazing, access to water, pasture, burial grounds, firewood gathering, and other community

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[247] W. Kisamba Mugerwa. Private and Communal Property Rights in Rangelands and Forests in Uganda.Makerere University of Social Research, MUK. 107 As stipulated by the Ankole Landlord and Tenant Law, 1947 and by Toro Landlord and Tenant Law, 1937 108 In Uganda today, public leases are provided for under the Public Lands Act, 1969.

activities. No specific ownership rights of control are conferred on users. Control and ownership are through the family, clan, or community.

Under individual, family; or clan customary tenure, emphasis is also placed on use rather than on ownership. Male elders are the custodians of customary land in most communities and determine distribution of the land. However, the family rather than the community has more control in the land utilization, and individuals in the family are allocated land. Allocations are only made to male members of the household with very few exceptions. As customary land has become more individualized and incidents of sale are very high though not initially acceptable, often before a sale is made clan members and family have to be consulted.

The advert of colonialism therefore, legitimized an intricate system of political relationships based on land that had been in existence for centuries, with distortions of individual property relationship introduced and engrained as a defining attribute. This shift was mediated through a series of agreements made with traditional rulers and their functionaries compelling a move from informal feudal relations in access to land; defined either by kingship, territorial control or social relations, to land relations whose operations were set within legislative norm. This not only legitimized the feudal system of land tenure then in existence, but firmly conferred upon feudal overlords' absolute control of land which they never had under customary law; thus, a formal transformation was accomplished. An elaborate system of land rights administration and registration was instituted to confer absolute title to legal beneficiaries and is still in existence to date. More so, the advert of colonialism firmly located the radical title to land by implication, to the British colonial government, who asserted the right to control the management and use of land, thus usurping and right to control and the power to manage the use of land previously vested either in communities or in the political functionaries of such communities. Being holder of radical title, the colonial government proceeded to grant a limited number of freehold estates to selected individual's churches and

corporations. The privatization of ownership left the occupants of mailo and native freehold in an insecure position for it meant that the genesis for multiple interests and rights on land was permanently laid and today has been blamed for the escalating land conflicts and evictions in the central region. For instance, the case of Kampala District Land Board and other v Venansio and the one major, and best known, intervention by the British in Uganda's land tenure relations was 1900 Buganda Agreement, which set in motion, firmly and steadily, the conversion of customary property rights into individualized property ownership rights in Uganda on the basis of a system approaching freehold tenure.

Other, where the respondents were facing eviction from the suit land, Court noted that, 'It was an admitted fact that the respondents were in occupation of the suit land at the time the lease was granted to the second appellant. The predecessors in occupation to the respondents had been in possession of the suit land since 1970. that they were not customary tenants, but they were described variously in the lower Courts as squatters, tenants of a tentative nature, licencees with possessory interest, or bona tide occupiers protected from administrative injustice.' This clearly indicates how the existing land law accommodates multiple interests on the same piece of land though even in some instances such as this case it is not clear, which particular interests the respondents had in the suit property save for being in possession hence resulting into unending conflicts.

Post-Colonial Period

The 1962 Independence Constitution slightly modified the tenure relations and established a National Land Commission to hold and manage land formerly held by the colonial government as "crown land" henceforth renamed "public land", and land boards within federal units to perform similar functions in those areas. Land which had been allocated to or vested in indigenous entities such as the Kingdom of Buganda, Ankole and Toro was not, affected by the independence Constitution.

Although the 1966 and 1967 Constitutions abolished federalism, they did not change the structure of land holding and distribution established under colonialism.

In 1975, a Land Reform Decree was promulgated. It made radical changes in respect of the land and vested all land; the radical title, in the State to be held in trust for the people of Uganda, and to be administered by the Uganda Land Commission. It abolished all mailo and freehold interests in land converting them into leasehold of 199 years where these were vested in public bodies and to 99 years where these were held by individuals, except those vested in the State which were transferred to the Uganda Land Commission. The decree also abolished all laws that had been passed to regulate the relationships between landlords and tenants in Buganda, Ankole and Toro. It scrapped the protection accorded to kibanja tenants whether on registered

land or on customary land requiring their consent and compensation before alienation. Thus, customary land users became tenants at sufferance occupying state land and could obtain long-term leases. However, this new tenure structure introduced by the Decree was largely ignored by local authorities, tenants and landowners alike. Mailo owners and tenants continued to operate in the semi-customary arrangements they were practicing previous to 1975. The law was never implemented in practice; by and large land transactions were being conducted as if the Decree did not exist. But it remained in the statue books until 1995 when the 1995 Constitution repealed it and established a new system of land administration, consisting of land boards in every district.

This Constitution introduced radical changes in the relationships between the State and the land and vested the radical title in the citizens of Uganda and in accordance with specific land tenure systems enumerated therein; mailo, freehold, leasehold and customary. This reversed the provisions of the 1975 Land reform decree and accepted a multiple tenure system. It's therefore clear that Uganda's policy since colonial times has privileged individual private

property. Freehold tenure and land markets have been put forward as progressive and efficient structures for economic development. The customary tenure systems that permit traditional pastoralism have found their areas restricted as common grazing lands become individualized private property. This tendency continued even under the Land Reform Decree of 1975, the Constitution, 1995 and has been the policy drive up to present day Land Act, 1998115.

Land tenure in colonial and Post Colonial Uganda

The emergence of new tenure systems:

One of the influences that impacted on the Customary system of land holding was the introduction of new systems of land holding after colonialism. These are covered below:

The colonial state in Uganda was built on the official philosophy of protectorate and indirect rule rather than colony, territory or direct rule. The Colonial state didn't introduce radical changes in the system of customary tenure in Uganda. The dominant economic structure chosen for Uganda was one of small peasant agriculture under the prevailing customary tenure. However, other land policies which could accommodate customary tenure were introduced to appease the local chiefs and get local political allies in the effective administration of the country. The colonial administration thus introduced policies which could accommodate customary tenure.

Mailo Tenure

This system is not a traditional system of land holding in Uganda and is founded on English feudal systems. It was established under the 1900 Buganda Agreement. It was born out of the settlement between the protectorate administration represented by Sir Harry Johnstone on the one hand, and the existing leadership in Buganda (at the time) represented by elders and chiefs – on the other hand.

In 1900, Sir Harry Johnston, as Her Majesty's Special Commissioner in Uganda, entered into a historic agreement with the Kabaka's regents (Stanislus Mugwanya, Zakaria Kisingiri and Apollo Kaggwa, and Chiefs of Buganda. This agreement was to establish clearly the powers of the Kabaka's government vis-à-vis the protecting power and the limits of those powers and, paramount of all, to affect a land settlement which, by giving security of tenure, would lay the foundation for the economic growth of the Kingdom.

This was the Uganda Agreement of 1900. It was later changed to read: 'Buganda Agreement' by legal notice of 1908. The agreement granted square miles of land to Chiefs and private land owners hence the term 'mailo' deriving from the English length-unit (mile) which was the basis of measurement in land allocations. The agreement divided the land among the crown (Queen's government), the Uganda Protectorate Administration, the Kabaka, his Chiefs and missionary societies. The total land under the Protectorate Government was 10,550 sq. Miles and came to be known as 'Crown land'.

Partly owing to the fact that more land was found to be available than was originally assessed, considerably more land was, after negotiation, allotted as private estates than the agreement provided for. Furthermore, owing to an interpretation by the Baganda that "1000 Chiefs and private land owners" meant "1000 chiefs and, in addition, land owners", thus the number of allottees under this section was, in fact, nearly 4000.

There were two categories of Mailo which were divided thus:

(a) Official Mailo

These were grants of land attached to specific offices in the Buganda Local Government. They could neither be sub-divided or sold and instead passed intact from the original land holder to his successor. This official mailo was defined in sec. 6 (a)&(c) of the Buganda Possession of Land law:

Section 6 "*Every man who has land for his chieftainship shall hold it as follows: (a)For all the time that he holds his chieftainship he will be allowed to take all the profits from the land which he has, except as written in the words below. . ..*

(c)To hold land in this manner will be called to hold "official Mailo" and shall be governed as directed above . . ."

The holder of an official estate could not sell that estate but he was capable of leasing the same in accordance with the Official Estates Ordinance/Act of 1918 (Cap. 203 of the 1964 ed. Laws of Uganda). This applied also to the grounds of official estates of Toro and Ankole Agreements. So here, one held land by virtue of his chieftainship (office), thus it was not private property. Under the agreement, it was clear that the 350 square miles given to the Kabaka was to be Kabaka-ship mailo, i.e it was not private property. Official Mailo was abolished in 1967 and these estates became public land.

(b) Private Mailo

In such estates, some 1000 chiefs and private land owners were allocated 8,000 square miles of land under the 1900 Buganda Agreement. The Mailo land owner held 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.

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. 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.

Clauses 15 to 18 of the 1900 Buganda Agreement dealt with the issue of land. The essence of this settlement was that approximately one half of Buganda became crown land and was vested in the Protectorate government. This is what was referred to as Public Land. The other half was widely distributed in the form of freehold estates ('mailo') to the Kabaka, his relatives, Senior chiefs, one thousand other chiefs and private land owners. These people got square miles of land among themselves. 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.

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, i.e 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 land lord directly over them and

possessing 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 land lord. 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 land lords and tenants in contemporary Uganda.

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 land lord's increase in the rate of busuulu and envujjo (rent) payable. Under this law, the rates were standardised and restricted and the peasants could not be forced off their bibanja without an order of Court. *[For further information on this interesting piece of legislation, refer to notes on Busuulu and Envujjo law].*

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.

The Land Transfer Act, No. 33 of 1970 barred a non-African from acquiring any interest in land owned by an African without consent of the Minister.

The Toro Agreement of 1900 and the Ankole Agreement of 1901

These introduced an almost similar scenario in Ankole and Toro. Here the agreements merely granted estates (in the form of native freeholds) to a limited number of chiefs and vested in the crown all land at the time which was waste and un cultivated. Part of the grants covered land which was customarily occupied. The existing occupants had to adjust their customary occupations in face of the new system of land holding. The relationship ceased to be entirely based on customary rules but became entirely based on British law, particularly the Toro Land Lord and Tenant Law, 1937 and the Ankole Land Lord and Tenant Law, 1937.

Crown Lands Ordinance 1903

In the Toro and Ankole Agreements (1900 & 1901 respectively), no mention was made of land which was cultivated but was not included in the freehold estates. The estates allocated were treated, unlike the mailo estates in Buganda, as grants from the Crown under the Crown Lands Ordinance of 1903.

In the rest of the Country (inclusive of Buganda, Ankole and Toro), two new systems were introduced under the Crown Lands Ordinance, 1903. Under this Ordinance, the Governor was empowered to make grants in leasehold and in freehold over what was called crown land.

It was not until the Crown Lands (Declaration) Ordinance, Cap. 118, was passed in 1922 that the Crown's rights over land, other than unoccupied land, land acquired for public purposes and that covered by the Agreements, was clarified. The Ordinance stated that – "all land and

any rights therein in the Protectorate, shall be presumed to be the property of a person or until the contrary thereof be proved."

The granting in Leasehold and Free hold by the Governor brought about two influences on the customary system of land holding:

i) A person customarily using land together with others, or holding land customarily, could opt out of the customary arrangement and instead apply for a leasehold or freehold title.

ii) It became increasingly possible for people to be bought out from their customarily held pieces of land.

Thus, land held customarily became subject to market forces and individualised dealings. Sec. 24 (2) of the Public Lands Act, 1969 sanctioned the practise of people selling their customary land to those ready to get title. It states as follows:

"A controlling authority shall not make a grant in freehold or leasehold of public land which, or part of which is occupied by persons holding by customary tenure, without the consent of such persons."

THE LAND REFORM DECREE, 1975 – INFLUENCE ON CUSTOMARY TENURE SYSTEM

The advent of the Land Reform Decree in 1975 led to the repeal of Sec. 24(2) of the Public Land Act (however, this provision is presently reflected in the Land Act). Section 3 of the Land Reform Decree (providing for Customary tenure on public land) provided that:

"(1) The system of occupying public land under Customary tenure may continue and no holder of a customary tenure shall be terminated in his holding except under terms and conditions imposed by the (Uganda Land) Commission, . . . and accordingly, the Public Lands Act, 1969, shall be construed as if sub section (2) of section 24 thereof has been deleted therefrom." On the basis of this provision, it became possible for someone holding land customarily to be forced out of that land by the Land Board granting a lease to another party.

Thus, the introduction of these new systems had the effect of subjecting customary systems of land to competition with other systems. In quantitative

terms, land subjected to customary tenure system has diminished and continues to do so as the new systems take their hold. Presently, on average there are 2,500 transactions involving mailo titles and 2000 transactions involving leasehold titles at the Registry of Lands. As of 2009, the number of titles at the registry headquarters was as follows: 600,000 Mailo titles; 110,000 leasehold titles; and 17,250 freehold titles. Regardless of these figures, land customarily held still constitutes about 70 % of land in Uganda. However, under the Judicature Act, the principle is clear that customary law is subject to written law. Therefore, a system of written law would prevail over a customary law system. *Case points:* see *Kampala City Council v Odindo [1971] H.C.B 32* and *Garuga Properties Ltd v K.C.C H.C.C. S No. 576 of 1990; [1989-91] Kalr 129*

The Land Reform Decree watered down the rights of those who held land under the Customary system of land holding. The Decree was based on the philosophy that no one should own land absolutely because to do so would put land on those who can't utilise it for economic development and yet those who can have no means of investment.

Thus, under its provisos, all land was declared to be public land to be administered by the Uganda Land Commission in accordance with the Public Lands Act, 1969, "*subject to such modifications as may be necessary to bring that Act into conformity with this Decree*". (Sec. 1(1)). All existing mailo and freehold estates were converted into leasehold (sec. 2(1)). This was so as to have a uniform tenure of leasehold which could be subjected to developmental conditions.

In regards to customary holdings, section 3 provided for the preservation of the customary tenure system of land holding. However, what was preserved was under sub sec. 2 of that section, i.e tenancy at sufferance. Sec. 3(2) stated:

"..., a customary occupation of public land shall, ... be only at sufferance and a lease of any such land may be granted by the commission to any person including the holder of the tenure, in accordance with this Decree."

At common law, a tenant at sufferance can be evicted any time and only enjoys the land at the pleasure of his land lord. The provision therefore meant that a lease could be granted over a tenant's land without his consent (since sec. 24(2) of the Public Lands Act had been repealed).

Under Sec. 3(1) of the Land Reform Decree, customary tenancy could be terminated on conditions approved by the Land Commission which included payment of compensation (also presently reflected in the Land Act).

In terminating these customary tenancies on Public Land, a procedure was set out in the Land Reform Regulations, S.I No. 26 of 1976. Under these regulations, the period of notice and amount of compensation were to be approved by the sub county land committee before termination of tenancy under sub sec. 9 and 10. Unfortunately the Committees were never set up, making the whole procedure difficult. See also *Case points: Paulo Kisekka Saku v Seventh Day Adventist Church SCCA No. 8 of 1993*, *Yazamu Ssemakula v L.K. Ssali, H.C.C.S No. 1608 of 1977; (1981) H.C.B 28*, *Christopher Katongole v Yusuf Ssewanyana, H.C.C.S No. 50 of 1989; [1990-91] Kalr 41; (1986-89) H.C.B 159*

With regard to 'bibanjas', the Decree reserved the bibanja holdings which were converted into customary holdings on public land by sec. 3(3(i)). It states –

"*. . . tenancies on land held immediately before the commencement of this Decree, . . . may continue after such commencement subject to the following: -*

*i) The conversion of any such tenancy into a customary tenure on public land, but without the payment of bussulu, envujjo or the customary rent required by the laws referred to under paragraph (b) of this sub section (*i.e the Ankole and Toro Land Lord and Tenant laws).

As such, they now became tenants at sufferance as well. The owners of 'mailo' could now terminate such customary holdings upon giving 6 months notice with compensation. Security of tenure was no longer enjoyed.

It became illegal to acquire and occupy land which wasn't under the customary holding (sec. 5, L.R.D). One could not increase acreage over free land which was regarded as public land. Specific areas would only be occupied by free temporary licence which was valid from year to year until revocation (sec. 5(1)). Contravening this law, i.e unlawful occupation would be regarded as an offence under sec. 6 of the Decree, with punishment of a fine not exceeding one year or both. One could only buy existing land after notice of 3 months by the prescribed authority. Security of tenure thus wilted away to be taken over by the land lord or the state.

Economic Interests

The other influence over customary tenure system has been the economic interest. The class customary system was set in a simple society which produces basically for consumption and not evolving around exchange relations (i.e Barter or monetary system). However, with the advent of colonialism, a monetary system based on cash crop economy was introduced so as to push people into producing for incomes and thus tax them so as to get surplus revenue from them.

Such a system which has exchange at its forefront does not recognise relations other than those that involve value. It revolves around individualism which is in contrast to communalism under the customary system. As such, land relations that are basically communal and don't respect the laws of the market place, e.g making profits, revenue, etc; became increasingly outdated because land also became a commodity., e.g the cases on mortgages - Wamala *v Musoke;* and *Waswa v Kigugwe* – supra. It thus became possible to individualize customary holdings so as to have dealings of a commercial nature.

Social and Political interests

This influence in customary tenure followed a movement from a society based on native culture and power to an increasingly centralised system where

power now lay in the state and those exercising such power, e.g the King, the Chiefs and the Lukiiko. So consequently, laws such as those in relation to land distribution increasingly became peripheral, for instance, clan elders no longer had the authority to distribute a deceased person's land. Respective clan councils were to lay their recommendations before the Kabaka and his Lukiiko/Council and the Kabaka's decision was final. With the decline of such institutions, customary holdings which depended on such, could not hold together.

The relationship between mailo owners and occupants on their land has been a controversial aspect in Land law since the introduction of mailo tenure system in Uganda. In a bid to solve the controversy, the Land Act of 1998 was enacted to clarify on the issue of who has which right on mailo land. This essay thus looks at the history of mailo as a tenure system and seeks to explain in detail, the extent to which the 1998 Land Act has endeavored to streamline mailo tenure through regulating the relationship between mailo owners and lawful and bonafide occupants. A brief analysis of the practical realities of the provisions of the Land Act on the same is also undertaken before recommending and drawing conclusions on the matter.

Background to the Mailo Tenure System.

Mailo as a tenure system was introduced under the 1900 Buganda agreement where the British distributed chunks of land to notable chiefs measured in miles[248]. The mailo owners held their rights in perpetuity and could freely sell or pass over their rights to heirs. In the intervening years, many mailo holders sold part of their holdings so much that by 1963, the original 4,138 mailo holders had shot to 85,089. When the original mailo holdings were being allocated, no regard was given to preexisting rights of occupants and peasant cultivators who originally held the land under customary tenure. To solve the ensuing conflicts between the original cultivators and the new mailo owners, the 1928 Busullo and Envujjo law gave the tenant cultivators security for their

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plots of land and set an annual fee of 10/= to pay to mailo holders. Peasant tenants were subjects to 1928 Busullo and Envujjo law until 1975 when the land reform decree abolished mailo tenure. Under the decree, tenants on former mailo became "tenants at sufferance" on public land. Until 1995, the decree was Uganda's major source of land law. The 1995 constitution drawing from recommendations of the Odoki constitutional commission, recognized mailo tenure in article 237 among other tenure systems in Uganda and also gave lawful and bonafide occupants of mailo land a moratorium against eviction until parliament enacted a law to define who a lawful and bonafide occupant is as well as the rights accruing to mailo ownership and occupancy of mailo land.

The 1998 Land Act consequently defines mailo land tenure in section 1(t) as; "*the holding of registered land in perpetuity and having roots in the allotment of land pursuant to the 1900 Uganda agreement and subject to statutory qualifications, the incidents of which are described in section 3*;" To that effect, section 3(4) of the Land Act provides; *"mailo tenure is a form of tenure deriving its legality from the constitution and its incidents from the written law which-*

a) involves the holding of registered land in perpetuity;

b) permits the separation of ownership of land from the ownership of developments on land made by a lawful or bonafide occupant; and

c) enables the holder, subject to the customary and statutory rights of those persons lawful or bonafide in occupation of land at the time that the tenure was created and their successors in title, to exercise all the powers of ownership of the owner of land held of a freehold title set out in subsections (2) and (3) and subject to the same possibility of conditions, restrictions and limitations, positive or negative in their application, as are referred to in those subsections.

Who is a Lawful and Bonafide Occupant under the Land Act?

A lawful occupant of land is described under section 29(1) of the Land Act as a person occupying land by virtue of the 1928 Busullo and Envujjo law or the Toro and Ankole landlord and tenant laws of 1937. A person who entered the land with the consent of the registered owner and includes a purchaser is also categorized as a lawful occupant per section 29(1). Similarly, a person who was in occupation of certain land under customary tenure but whose tenancy was not disclosed or compensated for by the registered owner when he/she applied for a public lease over the land is recognized under the Act as a lawful occupant. On the other hand, a bonafide occupant is described under section 29(2) of the Land Act as; a person who before the coming into effect of the 1995 constitution had occupied or improved certain land without being challenged by registered owner of the land or by his agent or one who had been settled on land by the government or its agent including a local authority.

How does the Land Act regulate the Relationship between Mailo Owners and Tenants on Mailo Land?

The Land Act considers a lawful or bonafide occupant of land as a tenant by occupancy of the registered owner of the land per section 31(1). A tenant by occupancy enjoys secure tenure on the land so long as he complies with terms and conditions stated in the Act which among others include payment of ground rent and others as agreed between the registered owner and the occupant. The rent payable to the mailo owner must be reasonable depending on particular circumstances of each case to be determined by a land board. [249]

The above provision strikes a balance by enabling the tenant by occupancy to enjoy his right of occupancy at the same time leaving intact the ownership rights of the mailo owner. This in the end preserves the status quo without tampering with the security of the occupant since he can not be evicted unless

[249] 2002 Land Act Amendment Bill

he fails to comply with the stated obligations. More so, the certificate of occupancy serves as evidence of the tenant's ascertained rights on the land in case of a court action against him/her.

According to section 33 of the Land Act, a tenant by occupancy can get a certificate of occupancy by applying to the mailo owner who notifies the land committee which decides before seeking the mailo owner's consent. In default to consent, the tenant can seek the consent of the land tribunal after which he goes to the recorder for the certificate of occupancy who will in turn notify the registrar and the certificate is granted. It must be emphasized that the core principle underlying this provision is consensus and agreement between the land owner and the tenant. The provision does not however turn a deaf ear to the parties where agreement is impossible or fails to materialize. The tribunal is required to consider the matter in full fairness such that the decision made does not injure any party but is as just as equitable.

A tenant can sublet, give as security, give away, create rights to another person to use the land and do anything allowed on the land under section 34 of the Land Act. However, the owner must permit the tenant to do anything and on refusal without reasons the tenant can appeal to the land tribunal. Again, the requirement of the permission of the land owner is aimed at maintaining the status quo without necessarily subjecting the tenant to the bondage of the owner as the land tribunal can be used to reach a fair conclusion where either party is not satisfied or is aggrieved. This section unequivocally grants the significant rights the occupant wants on the land. It further clarifies on the limits occupants have on the owner's land.

A tenant, who wants to give away his rights of tenancy according to section 35 of the Land Act, must give the first opportunity to the owner. Likewise, an owner who wants to sell his ownership rights must first consider the tenant basing on a willing buyer willing seller basis. The mediator can be invited to assist in the negotiations in case of complications in reaching an agreement. It is only after the mediator has declared his/her inability to assist that the

selling party can go ahead and sell to anyone of their choice. This avoids the danger of selling one's rights without notice to the other which may result in conflicts, arbitrary evictions or new conditions on the tenant by the new owner or selling occupancy rights to new tenants when in reality the owner had an interest in them.

Sub division and co-ownership of land between a tenant on mailo land and a registered mailo owner under section 36 of the land Act can be done on agreement between the parties. This avails any of the parties with the most realistic way of obtaining full rights in the land thus avoiding disputes that may arise from quasi ownership and occupancy rights. The key issue of agreement is once again stressed in this provision as the basis of any transaction. The delusion of eternal ownership and occupancy which has on more occasions than one caused land wrangles is demystified by the realities of the application of this section.

On termination and abandonment of occupancy, section 37 of the land Act provides that if a willing tenant by occupancy gives up his or her occupancy, the right to stay and occupy the land ends and is not compensated for leaving the land. Also, on informing the mailo owner of the intention to leave or on leaving the land for three years without leaving behind a relative or agent to take care of the land for him or her, the tenant in occupancy is deemed to have given up the right of occupancy. The grounds often cited by mailo owners of the land on evicting tenants that their land was not effectively occupied are settled by the clarity of this section. The occupancy rights are forfeited to pave way for the mailo owner's occupancy of his own land thus ensuring that the occupants take caution as to how they utilize the land they occupy.

Section 38 empowers a tenant by occupancy to convert his or her right of occupancy to a mailo, freehold, leasehold or sublease. However, this power is subject to the approval of the registered owner of the land. This section ensures that the occupant is not forever held under the bondage of the owner. It provides a straight forward way for the occupant, in the presence of agreement to attain more discernible rights in the land.

Has the Act thus satisfactorily streamlined mailo as a tenure system?

The Act on the surface and on a deep analysis of the circumstances surrounding the emergency of mailo tenure as a system of landholding in Uganda gives the best shot at streamlining mailo as a tenure system and also makes the most convincing attempt at making a clear distinction between the rights of occupants and registered owners of land, considering the subtle nature of mailo tenure. It tries as much as possible to define and list rights of occupancy as well as ownership rights under the mailo system of land tenure. Note must however be taken of the fact that the problem stems from the nature of the tenure system itself. It is as elusive as undefined as it stretches too far the rights of the tenant that they infringe on the rights of the true registered owner. In the end, the registered owner only remains an owner in name but the true ownership rights as known at common law are enjoyed by the tenant under the niche “occupant”.

My opinion is that the problem lies with the whole system. It is for the lack of definition of the system that re known scholars like T. Mugambwa have fumbled to call it quasi-freehold. As far as the Act is concerned, it is the best piece of legislation ever to exist in relation to mailo tenure system. In fact, it offers very clear, simple and localized solutions to the problems, wrangles, disputes between occupants and owners. The reason massive evictions of tenants and occupants by mailo owners continue to occur is because the Act has hardly been implemented. Institutions meant to operationalise the bulk of the provisions of the Act do not exist. For instance, land tribunals were stopped from working just like land boards. Offices of the mediator and recorder were not even instituted practically in the first place thus no single certificate of occupancy has since been issued since the Act was passed into law **T**his thus leaves the fundamental question of whether the Act streamlines the mailo tenure system and regulates the relationship between lawful and bonafide occupants largely unanswered as the Act has not been tested practically.

I can however authoritatively state that in indeed very isolated occurrence where the provisions of the Act have been followed, results have been impressive. An illustration of this is what Prof. Apollo Robin Nsibambi states in his letter to the Katikiro of Buganda[250]

"I have allowed tenants to acquire permanently 40% of the area they have been occupying on my land and I have remained with 60%. In some cases, I allow tenants to acquire 30% and I have remained with 70% depending on the land. I have also allowed lawful tenants to buy my land so that they can own it fully and transfer it in their names."

The Prime Minister did exactly what section 36 of the Land Act stipulates on sub division and co-ownership of land between a tenant on mailo land and a registered owner of mailo land. This proves that the Land Act if implemented is satisfactory on solving disputes on mailo land.

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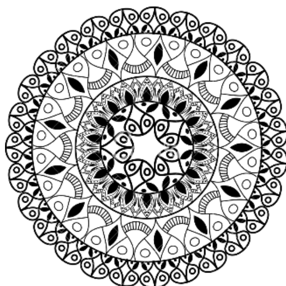
[250] "The Daily Monitor" of November, 12th, 2007;

CHAPTER TWELVE



A check on the Indispensability of the Kabaka: A fallacy

Kabaka is the title of the king of the Kingdom of Buganda[251]aaccording to the traditions of the Baganda they are ruled by two kings, one spiritual and the other secular, the spiritual, or supernatural, king is represented by the Royal Drums, regalia called *Mujaguzo* and, as they always exist, the Buganda at any time will always have a king. *Mujaguzo*, like any other king, has his own palace, officials, servants and palace guards. The material, human prince has to perform special cultural rites on the Royal Drums before he can be declared king of Buganda. Upon the birth of a royal prince or princess, the Royal Drums are sounded by drummers specially selected from a specified clan as a means of informing the subjects of the kingdom of the birth of a new member of the royal family. The same Royal Drums are sounded upon the death of a reigning king to officially announce the death of the material king. According to Buganda culture, a king does not die but gets lost in the forest. Inside Buganda's royal tombs such as the Kasubi Tombs and the Wamala

[251] Stanley, H.M., 1899, Through the Dark Continent, London: G. Newnes, ISBN 0486256677

Tombs, one is shown the entrance of the forest. It is a taboo to look beyond the entrance.

Additionally, there is another specific tradition of the Baganda concerning the two kings who rule the Kingdom of Buganda that began after the death of Kabaka Tebandeke (c. 1704 – c.1724). When Kabaka Tebandeke died, he was succeeded by two kings of Buganda; the first was his cousin Kabaka Ndawula Nsobya (c. 1724–c. 1734) who became the material king and the second was his only surviving biological son Juma Katebe who became the spiritual king. Juma Katebe (sometimes spelt Juma Kateebe) held the spiritual priesthood which was originally part of the throne of the Kabaka. Since the death of Kabaka Tebandeke, the two lines of kings have been in perpetual succession to date. Juma Katebe is king over the spirits or the spiritual forces of the Buganda kingdom. The current reigning spiritual king is also named "Juma Katebe" after the name of the historical only surviving biological son of Kabaka Tebandeke who was named Juma Katebe. When the coronation of the material king is done, the coronation of the spiritual king (Juma Katebe) is also done. The Juma Katebe, the spiritual king, is involved in the traditional procedures to crown the new material king after the death of a reigning material king. The Juma Katebe's spiritual power originates from Kabaka Tebandeke. The Juma Katebe regularly visits the "masiro" or palace tomb or burial ground of Kabaka Tebandeke located in Bundeke, Merera in Busiro (part of Wakiso district of Uganda) to perform special religious ceremonies.

Buganda has no concept equivalent to the Crown Prince. All the princes are equally treated prior to the coronation of a new king following the death of a reigning monarch. However, during the period of a reigning king, a special council has the mandate to study the behavior and characteristics of the young princes. The reigning king, informed by the recommendation of the special council, selects one prince to be his successor. In a secret ceremony, the selected prince is given a special piece of bark cloth by the head of the special verification council. The name of the "king-to-be" is kept secret by the special council until the death of the reigning king. When all

the princes and princesses are called to view the body of the late king lying in state, the selected prince lays the special piece of bark cloth over the body of the late king, revealing himself as the successor to the throne.

By tradition, Baganda children take on the clan of their biological fathers. It is a common misconception that the Kabaka (king) of Buganda takes his clan from his mother. Some go as far as saying that Buganda's royal family was matrilineal. Neither of these assertions is true. The Kabaka has his own clan which is called the royal clan "Olulyo Olulangira". Members of this clan are referred to as abalangira for males and abambejja for females. The misconception arose in part because the royal clan has no totem which is something that all other Baganda clans have. However, the totem should not be confused with the clan. The totem is just a symbol but the clan is a matter of genealogy. The royal clan has its own genealogy traced along the patrilineal line, extending all the way back to Kintu.[252]

The firstborn prince, by tradition called **Kiweewa**, is not allowed to become king. That was carefully planned to protect him against any attempted assassinations in a bid to fight for the crown. Instead, he is given special roles to play in the matters of the royal family and kingdom. Thus, the name of the possible successor to the throne remains secret.

The following are the known Kings of Buganda, starting from around 1300 AD.

1. Kato Kintu, early fourteenth century
2. Chwa I, mid fourteenth century
3. Kimera, c. 1374–c. 1404
4. Ttembo, c. 1404–c. 1434

[252] "Amannya Amaganda n'Ennono Zaago", Michael B. Nsimbi

5. Kiggala, c. 1434–c. 1464 and c. 1484–c. 1494
6. Kiyimba, c. 1464–c. 1484
7. Kayima, c. 1494–c. 1524
8. Nakibinge, c. 1524–c. 1554
   a period of Interregnum, c. 1554–c. 1555
9. Mulondo, c. 1555–1564
10. Jemba, c. 1564–c. 1584
11. Suuna I, c. 1584–c. 1614
12. Sekamaanya, c. 1614–c. 1634
13. Kimbugwe, c. 1634–c. 1644
14. Kateregga, c. 1644–c. 1674
15. Mutebi I, c. 1674–c. 1680
16. Juuko, c. 1680–c. 1690
17. Kayemba, c. 1690–c. 1704
18. Tebandeke, c. 1704–c. 1724
19. Ndawula, c. 1724–c. 1734
20. Kagulu, c. 1734–c. 1736
21. Kikulwe, c. 1736–c. 1738
22. Mawanda, c. 1738–c. 1740
23. Ndugwa I, c. 1740–c. 1741
24. Namuggala, c. 1741–c. 1750

25. Kyabaggu, c. 1750–c. 1780
26. Jjunju, c. 1780–c. 1797
27. Semakookiro, c. 1797–c. 1814
28. Kamaanya, 1814–1832
29. Suuna II, 1832–1856
30. Muteesa I, 1856–1884
31. Mwanga II, 1884–1888 and 1889–1897
32. Kiweewa, 1888
33. Kalema, 1888–1889
34. Daudi Chwa II, 1897–1939
35. Mutesa II, 1939–1969
    Monarchy discontinued by the Ugandan government, 1969–1993
36. Muwenda Mutebi II, 1993–present

THE POSITION OF THE KABAKA DURING THE POST-COLONIAL ERA "BEFORE 1894"

The kabaka of Buganda being referred to as Nantawetwa, Musota, Ssabassaja, Ssabalongo Takubwamugongo, Baffee, Ssabataka etc. He had absolute powers over everything, the land, wifes, assets,had his own security etc .all belonged to the Kabaka. Same also the kabaka had a court and he was the Judge upon his masses.

The kabaka had powers and delegated his authority to his chiefs and these include the katikiro ,omulamuzi and omuwaniika.One of the most powerful

appointed advisers of the Kabaka was the Katikkiro, who was in charge of the kingdom's administrative and judicial systems – effectively serving as both prime minister and chief justice. The Katikkiro and other powerful ministers formed an inner circle of advisers who could summon lower-level chiefs and other appointed advisers to confer on policy matters

The position of the Kabaka in the" Colonial era"

After declaring Uganda, a British protectorate, British checked on the position of the kabaka through the 1900 Buganda agreement was now left to be subordinate to the government of her majesty Queen of England. unto article 6 where kabaka's powers was reduced, supposed to be paid, given security, guns, saluted with 10-gun shots at every ceremony. Thus, these are just Privileges that were given to the Kabaka in order to blind fold his position hence his powers were checked. Furthermore article 9,10 of the Buganda kingdom, Kabaka's powers was reduced upon his administration when he could appoint the ministers and chiefs and later approved by the British government. In adding salt into the wound, on his land "per his name Ssabataka "He was given a share as per article 15 of the Buganda agreement. Interestingly the Kabakas title just like that of all other customary chiefs was reduced to His Royal Highness as opposed to His Majesty a clear indication of servitude towards the colonial master, in fact many of the colonial servants were given titles like SIR, CBE, CBO a vivid indication of the royalty and servanthood they had towards the king/ queen of England.

Dececration of Buganda legal order

The Case of **Rex vs Amkeyo** where it was held by CJ Hamiliton that purchasing a woman is like purchasing a chattel thus declaring the native act of marriage of bride price as repugnant to natural justice, doctrines of equity and good conscious.

In R v Amkeyo the question was whether the relationship between the accused and a certain woman was one of marriage. The features of the

relationship a) The woman was not a free contracting person b) The woman was treated as a chattel c) polygamous marriage. Justice Hamilton The court held that the relationship did not fit the idea of marriage. The alleged custom was implicitly repugnant to conscience and morality.

It was only after the Colonialist left that African jurisprudence started taking effect for example in Alai's case is the precedent on the validity of African Customary marriages in the post colonial era.

In Mifumi vs A.G It was an appeal from the Constitutional Court where the constitutionality of "bride pride" was challenged at first instance. The term "bride-price" used in the proceedings, was not wife purchase but a token of appreciation which the Supreme Court rightly found unsuitable.

The case of Gwao bin Kilimo v. Kisunda bin Ifuti (1938) put into sharp focus the conflict between the imposed common law system and the indigenous Turu customary law in the then Tanganyika (Tanzania). The case concerned the question of whether a father's property could be seized in compensation for a wrong committed by a son. The father, Gwao, petitioned the High Court to revise a decision by the Second-Class Subordinate Court at Singida, and to order his cattle, that had been seized because of an offence committed by his son, to be returned to him. Two issues were essential before the High Court: 1) was the decision based on a rule of Turu customary law, and 2) if so, was such a rule 'repugnant to justice and morality'. The conclusion of the judge was that the cattle had been wrongly seized

The position of the Kabaka in the" Post-Colonial era"

In 1962 The Participating of the Kabaka in the politics cemented the hopes of bringing back the position of the kabaka thus making the 1966 crisis

1967 the post of the Kabaka was no longer in existence as per the command of the fountain of honor Milton Obote.

1993 the restoration of the Position of the Kabaka per the Restoration of Tradition and cultural act of 1993. However much the position was restored but rights and powers where not restored also, so this reflects that the government of NRM only restored a ceremonial post of the Kabaka which is subordinate to the government.

Demystifying the over wielding powers of the Kabaka

Despite the names of the Kabaka i.e., CHU CHU, NANTAWETWA, BAAFFE, SSABASAJJA which signify his indispensability it appears the coming of the colonialist serious put to question his powers and reduced his authority to a ceremonial figure, come to think of it a man who owned all things land, people and animals a like, man who all his subjects only served at the pleasure of his overwhelming authority, a man who was referred to as "BAAFFE, SSABASAJJA" meaning he is the owner of all women in Buganda and men and was free to use and or direct any of his subjects as he so wished, in fact if any one felt offended by the kabakas action it was prudent that the offended person simply apologized to the kabaka for his inappropriate actions, in other words the kabaka was above reproach, even when once challenged to be circumcised after turning into mohammedan faith for fear of the sharp reads that caused a lot of pain during the exercise it is said that he the kabaka excused himself by saying the kabaka does not shed blood on his own land, this caused a lot of back lush among staunch Muslims who despised him for that and its argued that was the cause of the first moslem martyrs' that were murdered at namugongo, call any if at all he fills like thus this aspect was being checked in the case of **Mulira Vs Kabaka Of Buganda**[253], Mulira sued Kabaka of Buganda of taking his wife hence it was declared that Kabaka has no mandate to take some one's wife. While analyzing the above aspect, I do believe that kabaka's powers was dispensed

[253] The Executive Constitutional Mandate: Demystifying The Presidential Powers Over Reach In Uganda Isaac Christopher Lubogo Page 1061(Jescho Publishers)

and per now he does not have the absolute powers and some names are just perse with no meaning like Baaffe and Ssabasajja.

Further More the indispensability is checked on his personality, the fact is the 1993 Restoration traditional act didn't give the position of the kabaka absolute powers such as immunity and this is a reason why he is always sued because his deliberately mistakes. Basing on the case **Male Mabirizi Vs Kabaka of Buganda,**[254] it was held that the Kabaka has no mandate of immunity and thus he can be sued on the applicability of the things concerning Buganda such as land. To date the Kabaka doesn't have absolute powers over mailo land because the powers. **BAGAMUGUNDA VINCENT VS. UEB (In Liquidation) HCCS No. 400 Of 2007.** [255]Accordingly depending on where this land is situating, the right party to be sued should have been the Kabaka of Buganda.court dismissed the case with no costs.

However, In the case of **Prince Kimera Vs Kabaka of Buganda** where Prince Kalemera H. Kimera had sued the Kabaka of Buganda Kingdom, Ronald Muwenda Mutebi, claiming 16 square miles of land in Masajja, allegedly belong to his late grandfather, Sir Daudi Chwa II, the former king of Buganda.[256]

While dismissing the suit, the Principal Judge, Justice Flavian Zeija, faulted Prince Kimera for having got interested in the said land upon hearing that Uganda National Roads Authority (Unra) was to compensate land owners on the Kampala-Jinja Expressway, where this land is situated.

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[254] (Civil Appeal 184 of 2017) [2018] UGCA 133 (October 2018)

[255] www.ulii.com

[256] 29 September 2020, The Monitor (Kampala): *By Anthony Wesaka*

"It is clear from the pleadings that the late Duadi Chwa died in 1939. He left children and grandchildren at the time of his death. Those who were alive at the time, have never brought any claim for a period of more than half a century. It is only in 2017 that a few of them remembered that there is an estate in which they have an interest after they learnt of Unra compensation," Justice Zeija ruled.

This matter arose in 2017 when Prince Kimera and Princess Nalinya Nandaula, all descendants of the late king Chwa sued the Kabaka of Buganda, Ronald Muwenda Mutebi II (current king), Buganda Land Board, Commissioner for Land Registration and the Attorney General.

The duo was seeking to reclaim the land on account that the private land belonged to their late grandfather. They claimed that government wrongly returned the land to the Kabaka of Buganda and is now under the control of Buganda Land Board.

Further in his analysis, Justice Zeija agreed with the lawyers of the Kabaka of Buganda that the complainants did not have the powers (locus standi) to institute the case.

"It follows that the 1st plaintiff (Prince Kimera) is a great grandchild of the late Daudi Chwa II and is therefore, a 3rd degree beneficiary. Section 2 (b) of the Succession Act defines lineal descendants to include legitimate, illegitimate and adopted children but does not include grandchildren," Justice Zeija indicated.

"The 1st plaintiff (Prince Kimera) as a grandchild does not, therefore, qualify as a lineal descendant. That too, Daudi Chwa was survived by children and from his demise in 1939, none of his children has brought forward any allegations. It is quite baffling why the plaintiff as a 3rd descendant would turn up in 2017 to claim property which does not even belong to him," the judge added.

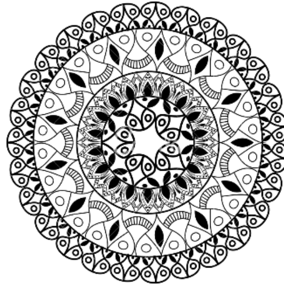
Justice Zeija also said he noted of late that a resurgence of claims by grandchildren and children of many deceased persons, many of whom allege fraud when in actual fact the alleged fraudsters are sometimes dead. “Unfortunately, courts have been laboured to face numerous land disputes like the instant one where even the very last descendant would arise decades later to bring claims in the pretext of fighting for what they assume to belong to them," the Principal Judge further held.

Adding: "This must stop. The law on succession was designed in a detailed way to protect the courts from such scenarios. In the premises therefore, I find that both the plaintiffs did not have a locus standi [justified cause] to bring this suit.

"The objection, therefore, succeeds. Upholding this objection has the effect of disposing of the matter." The petitioners were also asked to pay costs of the suit to the Kabaka.

In conclusion there fore the position of the kabaka was checked and thus is not vital, hence just a ceremonial post but not administerial since the period of colonial when he was subordinate to the Queen of England until to date when he is the subjected to the current government an offset of the colonial legacy.

CHAPTER THIRTEEN



Buganda Agreement Void Ab Initio or Voidable in Law

WHETHER THE 1900 BUGANDA AGREEMENT IS VOID ABNITIO OR VIOIDABLE

Void contracts abnitio, is Latin for void from the beginning, this means a contract was void as soon as it was created. it is a contract which was invalid from its very inception. “Ab initio” is Latin for “from the beginning”, and is used to describe contracts which were legally unenforceable from the moment they were created. Contracts are void when one or more vitiating factors are present for example duress, illegality as per the case of Makula International Ltd v His Eminence Cardinal Nsubuga & Anor[257] , undue influence.

David Taylor & Son v Barnett Trading Co [258],The parties were the buyer and seller of a delivery of steak at a set price. When the contract was made, there was a legal limit on the sale of meat above a certain price, which the

[257] **(Civil Appeal 4 of 1981) [1982] UGSC 2 (08 April 1982)**

[258] **[1953] 1 Lloyd's Rep 181 Hastie (1856) 5 HLC 672**

parties exceeded. The court held that the contract had been illegal ever since its formation since the price set had exceeded the legal limits available to the parties. The contract was therefore void *ab initio*. **Couturier v** the parties were the seller and buyer of a cargo of corn that was being transported from the Mediterranean to England. Unbeknownst to both of them, the cargo of corn had perished and already been disposed of before the parties entered into a contract for its sale. Once the parties learnt of their common mistake, the issue arose over whether the sale contract had been valid or not. The court held that the contract was void *ab initio* since both parties had been under the same mistake as to the physical possibility of performing the contract. Since there was no corn to be contracted upon in the first place, there was no contract.

Shogun Finance Ltd v Hudson [2003] UKHL 62, The parties were caught in a scam for a hire-purchase agreement over a car, where the scammer had pretended to be someone with good credit. The court held that the mistaken identity had voided the contract, especially because in a hire-purchase agreement, unlike in a regular sale, title of the property does not pass on to the buyer until after the credit has been paid. By pretending to be someone else, there was never *consensus ad idem* (a "meeting of the minds") between the seller and the scammer.

Ingram v Little [1961] 1 QB 31, The parties were caught in a scam where someone had pretended to be a reputable businessman, bought a car using a bad cheque, then quickly sold it to someone else. Once the scam was uncovered, the sellers argued that the contract they had with the scammer was void. The court (controversially) held that the case of mistaken identity rendered the contract void *ab initio*. The presumption in face-to-face transactions that people intend to contract with the person before them, was rebutted by the fact the seller had attempted to confirm the scammer's purported identity.

Associated Japanese Bank v Credit du Nord [1988] All ER 902 The court held that the non-existence of the machines had voided the contract, since it went to the root of what the contract was about. Without the machines, the fundamental nature of the contract had changed, so the parties common mistake as to their existence was sufficient to render the contract void *ab initio*.

Sheik Bros Ltd v Ochsner,[259]The court held that the parties' mistaken belief as to the land's capacity for growing the sisal had made the contract impossible to perform. The quantity of crops to be produced was essential to the contract, so the contract was void.

In so referring to the 1900 Buganda agreement, the agreement is void abnitio basing on the vitiating factors of Duress, Undue influence, mistake etc. as discussed above. Same also on rate of the essential elements of Capacity, acceptance and intention to create legal intentions wasn't there when making the 1900 Buganda agreement. The Agreement was protecting the affiliations of the interests of the British and the regents but not on Buganda in particular because by that time the kabaka was young and couldn't tell what is good and bad, same also there was a lot of duress and undue influence made by the British unto the regents hence making the 1900 Buganda agreement void abnitio. Conclusively therefore Buganda kingdom today, it has mandate to restructure and declare the 1900 Buganda agreement void abnitio hence in turn its upon their free will to declare their independence as it was before the signing of the unfair 1900 Buganda agreement.

The only plausible legal remedy is **rescission** which is a discretionary remedy that requires the parties to be put into the position they would have been had the contract not been made. Contracts are void when one or more vitiating factors are present, which means such contracts are legally unenforceable from the moment they were created.

[259] (1957) AC 136

Voidable contracts

Voidable contracts are initially considered legal and enforceable but can be rejected by one party if the contract is discovered to have defects. Unfortunately, if a party with the power to reject chooses not to reject the contract despite the defect, the contract remains valid and enforceable.

A voidable contract, unlike a void contract, is a valid contract which may be either affirmed or rejected at the option of one of the parties. At most, one party to the contract is bound. The unbound party may repudiate the contract, at which time the contract becomes void.

Typical grounds for a contract being voidable include coercion, undue influence, mental incompetence, intoxication, misrepresentation or fraud.[260] A contract made by a minor is often voidable, but a minor can only avoid a contract during his or her minority status and for a reasonable time after he reaches the age of majority. After a reasonable period of time, the contract is deemed to be ratified and cannot be avoided.[261] Other examples would be real estate contracts, lawyer contracts, etc.

When a contract is entered into without the free consent of the party, it is considered a voidable contract. The definition of the act states that a voidable contract is enforceable by law at the option of one or more parties but not at option of the other parties. A voidable contract may be considered valid if it is not cancelled by the aggrieved party within a reasonable time

For a contract to be voidable it has to legal and thus there has to be a vitiating factor for example Frustration, undue influence, mistake and misrepresentation. It's always at the discretion of an injure party to either to treaty as a warranty or ending it and applying for the remedies.

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[260] Clarkson, Kenneth W.; Roger LeRoy Miller; Frank B. Cross (2018). *Business law: text and cases* (Fourteenth ed.). Boston, MA. ISBN 978-1-337-10203-2. OCLC 982083011.
[261] US Legal, Inc., Contract by a minor, accessed 23 February 2016

VITIATING FACTORS IN THE 1900 AGREEMENT

There is a constant need to achieve a balance between certainty and fairness in the law of contract. In this respect, vitiating factors tend to focus on the latter (with the former constituting, at most, just one conception of fairness, amongst others). However, because of the consequent danger that contracts might be unravelled unnecessarily by the application of such factors, there is a need for doctrinal as well as conceptual clarity. Therefore, first, on key (and recent) doctrinal developments – particularly with regard (but not limited) to the law of mistake and the law relating to undue influence. Doctrinal developments cannot, however, be wholly understood without an appreciation of the relevant conceptual underpinnings and linkages. To this end, a few key conceptual difficulties would also have been examined with a view to elucidating a more effective practical approach towards the vitiating factors concerned.

The Buganda agreement of 1900 Buganda agreement was NEVER a good agreement on ground of undue influence, mistake, misrepresentation, duress, as summarized below and the Baganda people are free either to treat it as a condition to make it illegal abnitio or Legal. The ball is in the hands of the Buganda Kingdom to request for what belongs to her such as cultural institution, land etc. This inexorcible ghost that must be exorcised for once and for all, the Baganda people were given byooya bya nswaa, (light useless feathers) and in order to correct this one must address vitiating factors that cripple or invalidate the 1900 agreement such as:

1. Misrepresentation

A **misrepresentation** is an untrue or misleading statement which induces a party into a contract. It can be distinguished from opinions shared by the other party or **sales** talk, such as stating something is “the world's best”. In its purest form, a misrepresentation will be a material statement of law or fact, but what is most important is that this representation, however it was made, actually caused someone to enter into the contract.

There are 3 types of misrepresentation and, according to the **Misrepresentation Act 1967**, there are different consequences for each:

Innocent misrepresentation

- Where the party who made the statement can prove that they had reasonable grounds to believe and did in fact believe, up to the time of the contract, that the facts represented were true. The remedy is either **rescission** or **damages** calculated on normal contractual principles.

Fraudulent misrepresentation

- Where the party making the statement either knows it is false, does not believe it, or is reckless as to whether it is true or not. The remedy is rescission and/or damages calculated by including all losses stemming from the misrepresentation, even **consequential** ones.

Negligent misrepresentation

- Where none of the first two options apply. It is usually found when the party who made the statement cannot prove that they had reasonable grounds to believe that the statement was true, and the **remedy** is the same as for fraudulent misrepresentation. **Negligent misrepresentation** can also be found at common law when there is a special relationship between the parties which gave rise to a duty of care, and the remedy is damages based on the tort of **negligence**.

2. **Duress**

Duress is the use of threats or illegitimate pressure to force a party into a contract. The effect of duress is to render a contract voidable. Historically, duress was concerned with physical violence, but it is now accepted that it can also be economic e.g., a threat to strike if a certain contract isn't signed.

Economic duress differs from **commercial** pressure (which is acceptable) because it unlawfully leaves a party with no choice but to sign the contract. The line between the two can be difficult to draw, but the general rule is: to establish the **tort** of economic duress, the victim needs to prove that “illegitimate pressure” was applied to them by the perpetrator and that such pressure “caused” them to enter into the contract in question. The effect of duress is to render a contract voidable, and the remedy will be rescission and/or damages. In **2019**, the Court of Appeal held that where only lawful acts have been committed, economic duress will not be available as a defence unless bad faith can be proved. This is known as Lawful Act Duress, and essentially means that a party which uses lawful pressure (e.g., the lawful use of a monopoly position) to get another party to agree to a contract will not be guilty of economic duress if they acted in good faith.

3. Undue influence

Is the improper use of a position of power to pressure a party to enter into a contract. The pressure exerted falls short of duress but it is enough to vitiate a party's free and informed consent. It will be presumed in certain relationships of trust and confidence where it is widely accepted that there is an imbalance of power e.g., doctor-patient or solicitor-client relationships. This is especially true where the contract created is unfavorable to the “weaker” party. On the other hand, where there is evidence that there has been the abuse of a position of power but the parties do not have a relationship where undue influence is presumed, then there will be actual undue influence. The effect of undue influence is to render a contract voidable, and the remedy is rescission.

Unconscionable bargain

The doctrine of **unconscionably** can be explained as the unfair exploitation of unequal power to induce a party into a contract. The terms of the contract may be so unjust, or favour the party with the higher bargaining power so greatly, that enforcing the contract would be contrary to good conscience and

morally reprehensible. Courts are generally ready to set aside unconscionable transactions where one of the parties is mentally or financially weak, and they did not receive independent advice before entering the contract. Where unconscionable conduct is suspected, the party with the higher bargaining power must **show** that the contract is actually fair, just and reasonable. If they cannot, then the courts have the discretion to do what they see fit, making the effect of unconscionability hard to predict.

4. **Mistake**

When it comes to mistakes in contracts, there are 3 scenarios which can arise:

Common mistake

- Where both parties make the same mistake as to the subject matter (***res extincta***), the ownership of a property (*res sua*), or the quality of the subject matter.

Mutual mistake

- Where the parties are at cross-purposes, but each believes that the other is in agreement about the terms of the contract or the subject matter of the contract.

Unilateral mistake

- Where one party is mistaken about the identity of another party, the terms of the contract, or the nature of a signed document (***non est factum***). The other party will usually know of the other's mistake and take advantage of it.

The effect of the mistake depends on its nature and whether it goes to the core of the contract. If the mistake fundamentally changes the nature of the contract, then it is likely to be void (invalid from the start) and the remedy will likely be **restitution**. However, if the mistake is **voidable** (valid until a

party chooses to treat it as unenforceable), then one of the following equitable remedies may be appropriate: **rectification**, rescission or **specific performance**.

Remedies taunting the inexorcible Buganda ghost

As consolation the available remedies therefore becomes rescission or voidance is the correct legal terminology with retrospective effect, and usually its an all or nothing remedy, the question therefore becomes whether Buganda can just pick and choose different bits of the contract to keep, and in doing so if the whole agreement goes you can't rescind, amend the agreement in some way the only exception to rescinding would be unjust enrichment, lapse of time, judicial discretion, indemnity, damages, intervening third party rights such as the Bunyoro land question, and affirmation where recission becomes a choice and in which one party can choose to exercise or waive the right and in such scenario once rescission has been waved which seems to be the case then Buganda can never change its mind. and in doing so is Uganda and the Ugandan people ready to let go all her sacrifices that have directly and indirectly up held Buganda. This therefore become the ghost that will haut Buganda forever, it will and may be damages for humiliating the fine people of Buganda, a question however can Buganda exercise its sovereign mandate of state hood.

Declaration of a Buganda Nation

A good example is the people of Catalonia and Kurdistan who where asked if they want to live in an independent country by virtue of a referendum. If a referendum result in declarations of independence, what happens next? It may seem straightforward that Kurdistan, Catalonia, or even both would become the world's newest countries. But it's not that simple.

International law states that people have the right to determine their own destiny, including political status. Our right of self-determination is enshrined in the UN Charter, and clarified in the International Covenant on

Civil and Political Rights. This could be taken as the right to have sovereign statehood recognised by the international community. However, it's most often interpreted as the right of a population to determine how they are governed and who governs them. In other words, self-determination in today's world most often pertains to choices within an existing country rather than as a path to new statehood.

This is partly because the laws on self-determination were mostly written during the period of decolonisation. That historical context cannot be ignored when interpreting their purpose. During that time, colonial powers were taking steps towards dismantling their empires. They had become expensive to maintain and political pressure was growing within the colonies themselves.

Creating a Country called Buganda

Another complicating factor in setting up a country is the fact that, for one territory to become a new state, another already existing sovereign state must lose some of its territory. That would violate the laws and norms of territorial integrity. These are some of the oldest and most steadfast rules underpinning the international system.

Recognition of a new state essentially means legally recognising the transfer of sovereignty over a territory from one authority to another. An international body, including the UN, cannot just take away territory without the permission of the original "host" state. To do so would be a violation of one of the defining rules of the system of states.

Kosovo, for example, declared independence from Serbia in 2008 but even to this day it doesn't have sovereign statehood – despite more than half of the UN's member states recognising its independence. This is largely because Serbia still claims sovereign control over the territory, although other factors are certainly also at play. In the same way, Iraq would have to

relinquish sovereign control over territory in order for Kurdistan to become a state.

There are obvious competing and contradicting legal principles here. In at least one instance, these contradictions appear together within the same law. Indeed, what we find is that there is no clear legal path to obtaining sovereign statehood. There is also no legally established mechanism for who determines whether a territory becomes a sovereign state. So, we have to look at previous examples to work out how it's done.

The world's most recent states are South Sudan, which was recognised in 2011 and East Timor, which was recognised in 2002. In the early 1990s, there was a wave of new states due to the collapse of the Soviet Union and the breakup of Yugoslavia. In 1993, Eritrea also became a state after a decades-long war with Ethiopia, which had annexed Eritrea in 1962. Prior to that, the world's new states emerged out of the shifting or collapse of empires, most notable with the end of colonialism.

For East Timor and South Sudan, and in many ways Eritrea, statehood was part of attempts to resolve another problem: violent conflict. In all three cases, the host state (Indonesia for East Timor; Sudan for South Sudan; Ethiopia for Eritrea) agreed to relinquish control of the territory as part of negotiated peace agreements.

All of these new states obtained sovereignty after the disappearance of their former sovereign power, or with the permission of their former sovereign power. What they all have in common is that they became states in order to resolve some kind of problem, meaning there was some international benefit to their recognition. For the world's newest states, their recognition was more of a political act than a legally defined process.

When is a state recognised as independent?

Although it's not clearly laid out in law, a territory essentially becomes a sovereign state when its independence is recognised by the United Nations.

As the largest and most inclusive multilateral organisation, its sanctioning of sovereign statehood makes sense.

But while procedures for admitting new members are clearly laid out in the Charter and in the rules of the UN, these rules pertain to new members that are already sovereign states. Yet again there is ambiguity in the process that aspiring states must go through in order to become sovereign.

Becoming an internationally recognised sovereign country is not a clear or straightforward process. In many ways, it is determined by power and the international political climate of the day. And a surprising number of entities exist as unrecognised states, many for decades, without recognition of sovereignty.

If Catalonia or Kurdistan declare their independence, they may get sovereign statehood if their host states agree. If not, though, they could choose to declare their independence, and to exist as an unrecognised state indefinitely. May be Buganda should settle for unrecognized sate indefinitely hence agree to be haunted by the inexcorcible Buganda ghost.

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ABOUT THE BOOK

The purpose of this book is to protect and remind the people of Buganda who, for over 700(seven hundred) years now, have been facing humiliation and genocide perpetrated by colonial legacy. To this end, they as a people will seek to redeem, find and take back their " righteous God given sovereignty " It is not my desire plan to advocate for a Buganda territory. I do not intend to impose anything on anyone by force. At the same time, but history has it of a number of statements coming that whatever " documents" particularly the 1900 agreement was a mere puff from the colonialist and there is no need any more to abide by the documents setting forth the outcomes of World War I and II, as signed by the totalitarian western fascist, racial regimes, this book asks that magic question... How can Buganda respond to that?

A nation like Buganda should enjoy the right to self-determination, which is enshrined in Article 1 of the UN Charter, Freedom guides our policy, the freedom to choose independently our future and the future of Buganda's children, Buganda must be able to enjoy this right to make a free choice. In this context I would like to address the unsettled Buganda question, Buganda is obliged to protect her sovereignty from those who stole it from them; their choice is in favor of being with their historical homeland, a sovereign independent Buganda.

The current events in Buganda and Uganda generally have every thing to do with a desire to expel and cast out this unsettled "Buganda ghost" in quest for its independence which has existed for over 700(seven hundred) years. Those who took Buganda hostage and used it against them and Uganda, played a very unfair "game" used legal social contracts like the order in council, inception clauses, reception clauses and particularly the 1900 Buganda agreement which for all intent and purposes were done with a Minor,(Daudi Chwa) and compromised reagents with no legal authority and therefore no contractual capacity, biased, tainted with malafide, frivolous and vexatious only to serve their own selfish ends

To use Kabaka Frederick Mutesa words "we are acting to defend ourselves from the threats created for us and from a worse peril than what is happening now" (emphasis added), By allowing Buganda to be used as a staging force to coerce Uganda and align British interest along the Nile basin valley lead to interfere in Buganda's affairs while strengthens Buganda from within as a single whole, but weakening Buganda from outside, the British exploited Buganda's best weakness " expansionist " tendency and preyed on Buganda's desire to extend its boarders from mere three counties to its present almost 20 but at the expense of its sovereignty and independence.

The book also address the loss of military force of the Bambowa, reducing the once best naval force in the inter lacustrine area into mere " Byoya bya nswa" The Buganda fathers, grandfathers and great-grandfathers did fight the occupiers and did defend their common Motherland to allow today's continued neocolonialism to seize power in Buganda is to hoodwink, use, dump, use re-dump Buganda. The Kabaka swore the oath of allegiance to the Buganda people and not to the colonial government, the people's adversary which plundered Buganda and humiliated the Baganda people. I want to emphasize again that all responsibility for the possible loss of independence of Buganda will lay fully and wholly with the leaders of the time then which begs the question will Buganda ever be truly independent....and in answering that should that be a precedent for the cause of other 'nations' like the Buyoro Kitara Kingdom, and perhaps lessons for amalgamated independent principalities that were brought into forged nations like Busoga with technically no single king in form of a kyabazinga.