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**LAND TENURE IN BUGANDA
PRESENT DAY TENDENCIES**

A. B. MUKWAYA



East African Studies No. 1

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LAND TENURE IN BUGANDA
Present Day Tendencies

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A. B. Mukwaya

11th February, 1953.

CHAPTER I

INTRODUCTION

It is now over fifty years since a settlement of the land question in Buganda was made. There were two main results of this settlement. In the first place, the political and usufructuary rights of the chiefs were converted into a system of freehold tenure now known as the *mailo system*:⁽¹⁾ and in the second place, and subsequently, the rights of the peasant holders living on these estates were defined by law. Both types of rights are thus preserved and protected by legal enactments.

In the past fifty years, through the processes of adaptation and adoption, this whole system of land tenure has developed quite rapidly in relation to the great economic and political changes that have taken place in the country. Some of these changes in the system of land tenure are discussed in the succeeding pages, and particularly the extent to which fragmentation of holdings has taken place and the rules governing peasant holdings have been defined. These changes are described against their historical background and in relation to the particular land laws that have been passed. The more important of these enactments are reviewed in the second chapter of this work.

(a) **The background of the problem**

THE PEOPLE: The Baganda claim to be a people of mixed stock who migrated to their present habitat over the past six hundred years.⁽²⁾ 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

(1) 'Mailo' is derived from the English word mile used first to mean one square mile and finally to describe and differentiate this particular form of land owning.

(2) For a short history see SIR JOHN GRAY "The Early History of Buganda". *The Uganda Journal* Vol. III. No.4 April 1935. And for political development see A. H. COX "The Growth and Expansion of Buganda". *The Uganda Journal* Vol. IV No.2 September 1950.

arrived in the country. The British established their overall political power and protection in the next reign. Of historical interest to the problems of land tenure are, first the unchallenged power and overlordship finally achieved by the Buganda kings, and second, the presence in the country of several separate groups of people with special relationships to the land. These relationships will be discussed in the next section.

THE TERRITORIAL ORGANISATION : The kingdom of Buganda covers part of the north-western and western margins of Lake Victoria between the Nile in the East and Lake Albert in the West.⁽¹⁾ The total area, excluding open waters, is given as 17,295 square miles.

For administrative purposes the country is divided into twenty administrative units each of which is called a *Saza*, translated as "County". Each county is divided into from four to fourteen *gombolola* or "sub-counties." Below this there are smaller units called *miruka*, translated as "parishes." The Central government consists of the Kabaka (the King), his three ministers, and a legislative assembly called the *Lukiiko*.

A system of judicial courts is associated with these administrative units of which the *gombolola* court is the lowest, the *saza* court the next highest, and above these the Principal Court at Mengo, the centre of the Buganda Government, which is presided over by one of the three ministers.⁽²⁾ In the matter of cases over holdings, to which reference is made below, civil or criminal cases can be pursued by successive appeals from the lowest court to the Principal Court. An appeal can also be made to the Judicial Adviser, Buganda.⁽³⁾

Outside this system of courts, some of the landowners still act as informal arbitrators dealing with petty quarrels

(1) Buganda is one of the four provinces in which the Protectorate of Uganda is divided.

(2) The present system of Buganda courts is described by Lord Hailey "Native Administrations in the British African Territories 1950 Part 1. Page 20.

(3) The Judicial adviser is an official of the Protectorate Government who has both advisory and revisionary powers to the Buganda Courts, and who in some cases acts as an appeal court.

about land either between the peasant holders themselves, or between the holders and the landlord's stewards (*basi-gire*) who allocate the plots to the peasants. In the case of the Kabaka's personal estates which cover some 350 square miles, this system of arbitration is formalised on traditional lines. Here the Kabaka appoints a "chief" over his lands. The European would describe him as a senior steward or bailiff, but in fact he still has political and judicial powers which resemble those of the chiefs (*abatongole*) given charge over districts by the Kabaka in the old days, and these powers are quite distinct from those of the bureaucratic hierarchy of chiefs (*miruka, gombolola, and saza*) recognised by the Protectorate government, and referred to above. The "chief" or steward of a Kabaka's estate has his own council to administer justice as regards land cases for the tenants in his area. Appeal can be made from this court to the higher grades of royal stewards and finally to the Kabaka himself, who in this instance acts much as any other landowner does when cases are referred to him by peasants on his land. There is a central office at Mengo which deals with cases referring to the Kabaka's land, and where the necessary records are kept. ⁽¹⁾

If one of the litigants is not satisfied with the arbitration given, then he can take his case to the general statutory courts, starting with the *gombolola* court in his area from which the case can go on appeal to the *Saza* court, and to the Principal court of Buganda.

THE LAND: The black and red loam soils of Buganda are suitable for a variety of food and economic crops, and in fact this southern part of Uganda contains some of the richest agricultural land in the Protectorate. The average rainfall is generally above 50 inches a year and is spread over the greater part of the year with two periods of heavy rain, one between March and June and the other between September and November.

(1) This Office is referred to as that of the *katikiro we byalo* (Minister of the Kabaka's lands) and it is from its records that some of the cases quoted in this study were obtained.

The country can be roughly divided, in respect of natural vegetation, into a long grass and a short grass area. The former is good for banana growing and the latter is not very good for this purpose. The long grass area which covers most of south Buganda is also the centre of the chief industrial development of Uganda which is concentrated mainly in, or near Kampala. For these reasons, the long grass area is relatively more densely populated than the short grass area. But the density of population is only relative, because Buganda with a total population of one and one quarter million, and an overall density of about 77 persons per square mile, compares favourably with some other tribal areas in Uganda, such as Kigezi. The country as a whole is definitely not over-populated, although the distribution is patchy. Land is probably fully occupied in the fertile long-grass country to the south and the population round Kampala is very closely settled, but there are still tracts of land further north which are barely touched by human habitation. ⁽¹⁾ The production of food crops has so far been limited by the food habits of the people, that is to say to the food crops with traditional associations. The chief food crops are plantains, sweet potatoes and cassava. Cotton was introduced by the Protectorate Government in the early part of the century, and coffee some years later; and most peasants grow one or other of these economic crops. ⁽²⁾

The traditional agricultural implement has always been the short-handled hoe made by local smiths from unwrought iron and tied to a handle shaped like a smoking pipe. Now another type of hand hoe has been introduced and is used almost universally. But whatever type of hoe is used it is well known that with this simple implement a great deal of labour is required. In the purely subsistence economy of the past, all the labour was provided by the

(1) See J. M. Fortt in "Economic development and tribal change" edited by A. I. Richards 1953. Chapter III for a description of the relation between vegetation and population density in Buganda.

(2) The relative importance of the main food and principal economic crops is shown by the following percentages of estimated acreages under crop for the year 1950. Cotton 30.4%; Plantains 29.1%; Coffee 9.5%; Sweet Potatoes 6.1%; Cassava 5.0%; Maize 5.6% Ground nuts 3.5%; Millets 2.1%. Data from Uganda Department of Agriculture Annual Report 1951.

women of the household; but with the introduction of cash crops, the men have taken to cultivation. It is generally considered however, that the responsibility for producing the food is that of the women. This leaves the men free to concentrate on the economic crops. With the increased wealth resulting from the sale of cotton and coffee, immigrants from other parts of Uganda and from Ruanda-Urundi have been drawn into the country and are paid to supply the necessary labour.

The Government has been experimenting with the use of mechanical aids since 1947 and some of the larger Ganda farmers have hired tractors from the Agricultural Department to plough up their land. The extent to which the present system of land-tenure makes possible large scale farming, is discussed below.

(b) Historical factors

The period immediately before 1900 was very disturbed. In fourteen years between 1884 and 1900 there were four kings, three civil wars and a number of minor disturbances.

Each of these events meant changes among the holders of high political offices and subsequently among their followers. The civil wars particularly were responsible for the wholesale transfer of large sections of the population from one county to another. First the Christians were driven out by the Muslims. Then the country was divided into spheres of influence between the three religious groups of Roman Catholics, Protestants and Muslims. All these arrangements meant that the chiefs and their followers had to move from one area to another.

Although these movements facilitated the allotment of land to individual owners after the Uganda Agreement 1900, they had the effect of almost obliterating both the traditional system of land tenure and the settlement patterns of the Baganda. The past is therefore not as easy to trace as it would have been if there had been continuity of settlement in the majority of the villages. Fortunately there are two brilliant and generally accurate studies of the system of land tenure in Buganda before the advent of

the Europeans. One is by Judge Morris Carter made about 1906; ⁽¹⁾ and the other by Dr. L. P. Mair published in 1932. ⁽²⁾

The most we can do is to re-interpret such aspects of the system as we feel have been either overemphasised or neglected. On the one hand, Morris Carter in his desire to prove that there was such an institution as private ownership of land in the traditional society of the Baganda, gave an undue emphasis to the supposed rights of the kinship heads, as distinct from the power and the over-lordship of the King. ⁽³⁾ On the other hand, L. P. Mair tends to give a picture of a more uniform and static system of land tenure than the facts warrant. The impression given by the evidence available is of a society in which the relation of the chiefs to the people, and through the people to the land, was basically political; and in which the usual rights associated with control over land were either hereditary or were granted directly by the King. Where these rights were hereditary, they tended to become associated with political or ritual functions. Where the rights were granted by the King, they were either a function of political office, or given as a reward for political or personal service to the King.

It is possible, I believe, instead of analysing the system according to the different social groups such as clans, which exercised rights of control over land, ⁽⁴⁾ to list the different types of rights which might be held at one and the same time by one person, or one class of persons, or even by different groups in the society. This is of course mainly a distinction in analytical approach. It is equally possible either to consider the rights available to an individual by virtue of his membership of a social group, or to list the sum total of land rights recognised by the society which may be exercised by the individual in one capacity or another. The latter approach is specially suitable in a society

(1) W. MORRIS CARTER. "Report on Land Tenure in the Kingdom of Buganda" *African* No. 369, 1906.

(2) L. P. MAIR: "Buganda Land Tenure." *AFRICA*, Vol. VI, No. 2, 1932.

(3) It must be remembered that Carter's evidence came through the Prime Minister, Apolo Kagwa, who had himself many interests in land, or from witnesses chosen by him.

(4) cf. L. P. Mair *op. cit.*

like that of the Baganda where hereditary rights existed side by side with temporary rights bestowed as the result of a personal relationship with the King, and where there was a great deal of individual social mobility. It was theoretically possible for any member of a clan to become a chief with control over land, whether he was one of the clan or lineage heads or not. It was not uncommon too, for a kinship head with certain rights to land attached to his hereditary position to combine with this office a political post associated with another set of rights over land.

We can therefore divide the rights of control over land before 1900 into four main types :

- (i) Clan rights—*Obutaka*.⁽¹⁾
- (ii) The rights of the King and his chiefs—*Obutongole*⁽²⁾
- (iii) Individual hereditary rights—*Obwesengeze*⁽³⁾
- (iv) Peasant rights of occupation—*Ebibanja*⁽⁴⁾

CLAN RIGHTS : A theory has been advanced by some writers⁽⁵⁾ that the clans in Buganda were originally independent political units which later joined together to form one kingdom. There is very little evidence however, to support this theory. What is well known is that the ancestors of at least five of the forty two clans in Buganda claim to have settled in the country prior to the advent of the Buganda Kings. Most of the rest claim to have come with one or other of the invading dynasties or to have sought for, and obtained, the protection of particular kings. Some of the others seem to have been clan heads in territory beyond the original boundary of Buganda, which was conquered in the course of the expansion of the Kingdom.

(1) *Etaka* means "soil" and *obutaka* means "related to the soil."

(2) *Okutongola* means "to come out to the fore" and *obutongole* means related to an official position.

(3) *Okusenga* means "to join a chief's village" and *obwesengeze* means land rights given in perpetuity by another person, usually the Kabaka.

(4) *Ekibanja* (pl: *Ebibanja*) literally a house-site but used for the entire holding.

(5) cf. Sir John Gray *op cit*.

It is obvious that where clan ancestors settled at the same time as the present dynasty, or after their arrival, their claim to land can only be based on original grants by the kings or to undisturbed occupation for more than one generation. Some of these must have been individual grants for services rendered to the kings by one of the clan's ancestors, and it is interesting to find that some of these claims to clan lands are adduced in support of claim for rights in certain peasant holdings. In *Saulo Lule vs Yakobo Semiti* ⁽¹⁾ the plaintiff, Saulo Lule, successfully resisted a reduction in size of his original holding on one of the Kabaka's private estates by showing that the holding was part of an hereditary estate belonging to his family. In a long statement he claimed that the estate was granted to his ancestors eight generations ago by a Kabaka and that the estate was attached to the herding of a certain ritual cow named Kanyomu. Another case concerned the control of a certain village named Luuka in Kyagwe county. The first owner of the village was one called Namupa of the elephant clan and this first owner had a tradition that the village was given to him by Kabaka Semakokiro, who brought him from Singo as a blacksmith to make axes which were required in the building of a big fleet of canoes.

We find all over the country claims to hills and villages as "clan lands". Some of these claims are very old, while others are of more recent origin and are to be traced to a grant by one or other of the former kings. They are invariably places where ancestors, or rather senior ancestors, such as clan or lineage heads, were buried.

In some cases the clan lands have become merely villages or hill-tops associated with the legendary origins of the first clan or lineage ancestors and are referred to only on occasions when a man is required to state his origins, e.g. on the occasion of a formal presentation to the King. In no case does a claim cover one continuous territory or a big number of contiguous villages. The hills and villages

(1) *Katikiro we byalo bya Kabaka*, No. 13/12 of 1947.

which are the clan lands are dotted all over the country with the greatest concentrations near the past residences of the kings. ⁽¹⁾

Only in a few such villages were the clansmen in the majority. Some surprise has been expressed at this fact, but a number of simple explanations can be found for it. In the first place a clan is a naturally expanding group. Whatever might have been the original clan land, or villages of first occupation, these could not support all the descendants of the clan founders. The resultant expansion can be either to contiguous territory, or, where this is occupied by other groups, to any suitable territory within the same political or cultural boundaries, that is to say as long as the expansion is carried on by peaceful means. In Buganda, the limitation to the dispersal of clan lands was therefore the area of effective political control of the kings. Thus the political power of the kings acted on the clan territorial organisations in two ways. First, it provided a wide area for free personal mobility of the subjects. Compelled to leave the clan lands either by natural increase or by similar phenomena they were able to establish themselves elsewhere in the Kingdom. Secondly, the political organisation itself, built on a system of transferable chiefs directly appointed at the King's pleasure, led to a good deal of movement of important men and their families. Many of the more capable of the clan leaders were appointed to such posts, and took their kinsmen with them. This provided an alternative means of access to power and wealth for which a man might be ready to leave his clan lands.

The process of permanently detaching the clansmen from their ancestral places was accentuated by the power of the Kings to grant heritable rights to certain small pieces of land. These became burial places for certain families and lineages, thus obviating the necessity of returning to the original burial places. The more important of these permanent holdings were recognised as of equal status with the

(1) Roscoe's list of Buganda clans shows that some clans had as many as 37 different butaka centres in 1911, and these have since been increased (see below). He describes a butaka as a place where ancestors have been buried for 3 generations, cf. Roscoe "The Baganda" (1911) Chap. VI.

clan lands themselves. A similar attitude was taken towards the estates in freehold which were granted to individuals after the Uganda Agreement 1900. It was believed that each of the new estates would become an addition to the clan lands and a burial place for the attached families or lineages, and this has in fact become an established practice.

It has been stated above that a number of the kinship heads took part in the hierarchy of the appointed chiefs while others remained leaders of kinship villages working under county or sub-county chiefs. Actually, the power of the kinship heads tended to be greatest in the areas furthest away from the King and least in the areas where the control of the King was greatest. In the latter areas, most of the estates of the King and the royal relatives were situated, and it was here that most of the grants to the chiefs and other palace functionaries were made. In these areas, the clan lands were limited to single villages or to the tops of the hills. Farther away from the palace the people lived more or less under the direct control of their kinship heads who combined the political duties imposed upon them with the traditional control over land exercised by a clan or lineage head. The clan however, remains an important unit as regards land ownership since under modern conditions heirs to an estate must be approved first by the lineage (*sigá*) and then by the clan (*kika*) head. Thus lineage and clan councils have a very effective control in such matters.

THE RIGHTS OF THE KING AND THE CHIEFS (OBUTONGOLE): When remuneration for political services took the form of labour and tribute, each political office had to have a number of estates attached to it commensurate with the status of the office and of the holder. Therefore the King had some of the richest villages and the greatest number of estates spread all over the country. Each of the palace officials had under his control a number of estates belonging to the King. These were usually administered by deputies, while the officials performed their duties at the palace. For example, the chief cook had several villages

from which he received a regular supply of foodstuffs; and the chief executioner also had a number of villages where his assistants and other men were settled. The King's relatives, the Queen Mother, the King's sister, the Princes and the Princesses, each had several villages in different parts of the country. The Prime Minister and the Keeper of the Fetishes each had a similar number of estates. Finally, each of the county chiefs and each of the sub-county chiefs, had in his county or sub-county a number of personal estates.

The essential features⁸ of these rights were:

- (i) They covered certain estates attached to particular offices and the usufructuary rights terminated with the death of the holder of the office; or through his promotion or demotion.
- (ii) The sub-chiefs and deputies in the estates were directly appointed by the "owners" of the estate, and removable at their pleasure.
- (iii) The estates of the relatives to the King and the more important chiefs were not subject to the normal methods of tax or tribute collection. The "owners" were however, expected to give presents to the King.

One other form of personal estate held in official capacity may be described. About one hundred years ago, when King Suna organised the army into a system of fighting bands or regiments, *Ebitongole* ⁽¹⁾ each captain of a band was granted a number of villages controlled directly by him or his assistants where his men, usually young men, were settled. Some of these captains were granted small estates near and around the palaces where they could be called upon at anytime. Others were appointed to wide areas on the fringes of the Kingdom where they had the responsibility for warding off small attacks by the neighbouring tribes; and where they had full responsibility for the government of the areas which were not fully absorbed into the Kingdom. In either case the estates were granted

(1) J. Roscoe - op.cit. p.2.

directly by the King to whom the captains were personally accountable for the collection and the rendering of the tribute from the land. These captains were in other political matters subject to the control of the county chiefs or the Prime Minister and were eligible for all political offices.

INDIVIDUAL HEREDITARY RIGHTS (OBWESENGEZE): Finally there were other minor claims to land control which did not carry with them any political duties. These claims were based either on long occupation of one particular holding confirmed by the King, or to an original grant of one holding or one small estate to an individual chief or peasant by the King himself. This form of tenure was a response to the increasing need for security in a political system where individuals were often permanently removed from the clan lands, and where political risks necessitated some form of secure tenure. Both chiefs and peasants who had some access to the King, availed themselves of the same opportunity to have a permanent claim to one particular piece of land recognised. It was common for a chief early in his career to choose one holding for his personal use as distinct from the holding for his official use. The former was called *ekibanja eky'obwesengeze* and the latter *ekibanja eky'obwami*. The personal claims were confirmed by the King sending a special messenger to plant a bark-cloth tree on the holding or estate. This would then become a permanent piece of evidence of the claim to that land.

The custom has been described to me by one of the Kabaka's officials as follows:

"If one of the lower chiefs or even a peasant was granted by the King himself a holding or an estate for his permanent personal occupation, the grantee brought one cow to the King and was then given a special messenger by the King. The messenger would then take the grantee to his chiefs starting from the highest to the lowest. Each of these chiefs would add his own messenger all of whom would be present when the King's messenger planted the bark-cloth tree. Any

one of the messengers or all of them together, would be witness to the permanent claims to that piece of land by the grantee."

The value of these land rights became so great that certain royal and other clan lineages came to be referred to as possessing or not possessing these rights. For example, princes who are no longer eligible for succession to the throne are referred to as "*Abalangira Abemituba*"—princes of the bark cloth tree, and are distinguished from—"Abalangira Abe'ngoma"—princes of the drum or direct descendants of the last monarch. Again, the major sub-divisions of the clan (*Siga*) are referred to as "*Enyiriri ez'emituba*"—lineages of the bark-cloth trees.

The essential features of these rights were :

- (i) They were small, covering one holding or a group of holdings occupied by the relatives or the servants of the holder.
- (ii) They carried no political rights or duties, although the holders could have, and usually had, political duties in the same area or in another area.
- (iii) They were permanent in the sense that they were for life and could be inherited by the successors.
- (iv) The owners were free from the labour obligations due to the chiefs from the peasants, but they could be called on for other political and military duties.

PEASANT RIGHTS OF OCCUPATION: The number of persons who had the right of control over land was naturally limited. But every individual had a right to the occupation and use of land. This was derived from his status as a member of a kinship group if he lived in the type of village which would normally be occupied by a kinship group and controlled by the head of that group. If on the other hand, a peasant lived in a type of village which would be ruled over by a politically appointed chief, he derived his rights from his position as a subject of either that particular chief or some other chief in the political hierarchy.

His position as a peasant was more or less the same whether he lived under a kinship head or any other type of chief. But his security of tenure and freedom from molestation and petty irritations were greater if his chief were a clansman. This feeling sometimes gave rise to wholesale movements of large sections of the population as clansmen followed a successful member of their clan in his progression from bigger to bigger chieftainships.

The nature of the peasant rights was more or less as it is today. They included:

- (i) The right of undisturbed occupation dependent on correct social and political behaviour,
- (ii) Grazing rights, water rights and rights to trees and firewood; and
- (iii) The right to remain in possession on succession.

In return, the peasant gave tribute of beer and food crops (now commuted to money dues) and free labour to his chief or clan head, and military service.

CHAPTER II
THE LAWS RELATING TO LAND ⁽¹⁾

(a) **The Uganda Agreement 1900 and the Land Law, 1908**

By the terms of the 1900 Agreement ⁽²⁾ 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 allotted 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;
- (iii) that where a person leaves no will, succession will be ascertained by customary rules of succession; and

(1) A complete survey of the land laws is not attempted. Such provisions only that are relevant to this study are here discussed. For a comprehensive survey of the more important land laws see MEEK, C. K. *Land Law and Custom in the Colonies*, (1946).

(2) See WILD, J. V. *The Story of the Uganda Agreement 1900* for the events leading to the making of the Agreement and its other clauses.

- (iv) 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.

(b) **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. ⁽¹⁾ 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 GOVERNOR 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 followed in the future, in respect of Crown land outside townships and trading centres in the provinces other than Buganda. ⁽²⁾

(1) J. V. WILD, op. cit., p. 73.

(2) The provisions of the declaration would in Buganda apply to the Crown land and not *mailo* land.

FIRSTLY, these rural lands are 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 to its wishes. Moreover the Governor will not alienate land to non-Africans except:

- (a) for agricultural or industrial or other undertakings 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 somewhat 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%.⁽¹⁾

(c) The Registration of Titles Ordinance 1922

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*

(1) The conditions under which tenants on Crown land live are discussed in chapter IV and compared 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 identifiable 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.⁽¹⁾

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

(1) MEEK, C. K. *op.cit.* in Chapter III discusses the problems involved in this system of Registration and compares it with the systems in other Colonial Territories.

either (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 against those 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 ⁽¹⁾ 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*.

(e) **The Busulu and Envujo Law, 1928** ⁽²⁾

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.

(1) *Law to Empower the Kabaka to Acquire Land for Purposes Beneficial to the Nation, 1945.*

(2) *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 produce 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. It was also expected that now that the Kabaka had assumed power after a long period of regency, he would be able to adjust these claims in opposition to his powerful minister. But when the Kabaka confessed to his constitutional inability to effect a change without legislation by the *Lukiiko*, further appeals were directed to the Protectorate Government. I suspect that the uncertain claims to rights prior to the Kabaka's reign that were put forward by some of the members of the *Bataka Association* were advanced to impress the Europeans.

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

either not Christians or because they had not the necessary political influence. 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* ⁽¹⁾ 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*.”

(1) Principal Court Civil Appeal No. 1 of 1942.

CHAPTER III

THE MAILO ESTATES

With the beginning of the allotment of the 8,000 square miles the main features of the present distribution of the *mailos* were set. In the first place the number of 1,000 chiefs had been a mere guess. It was soon realised that the number of rightful claimants, both in official and private capacity, was very much greater. To this may be added an unknown number of faithful servants and other followers of the chiefs who had no valid claim to land except that they were present at this time of sharing out of a new form of property. By the time the allotment was completed, therefore, over 3,700 allottees had been registered. ⁽¹⁾

In the second place all the allotments were not made at the same time. By the time the first allotment was over there were 1,200 square miles left. These were to be redistributed among the first allottees and others. Then there were the 'lapsed' claims, being the *mailos* allotted to chiefs who refused or were unable to convert their allotments into actual land claims. These too were redistributed.

Thirdly, the claims to land were to be substantiated by 'cultivation and occupation'. This necessitated a complicated adjustment of contiguous pieces of land according to the conflicting claims of the allottees.

The result of all these conditions was that few *mailo* owners received large continuous estates in any one area or in one county. Their estates were and are still distributed piecemeal in many counties. It was this system which originally determined the attitude of the *mailo* owners to land as a source of revenue derived from peasant tenants, and which created the institution of landlords' stewards (*Abasigire*) who play an important part in the administration of the country.

(1) Thomas and Spencer. "A History of Uganda Land and Surveys," 1938.

The allotment was completed in 1909. Since then a continuous process of fragmentation of the estates is known to have been going on. In order to determine the extent of this process and to examine other related changes in the whole institution of *mailo* owning a sample of estates from two different areas was taken and analysed for evidence as to the numbers of the present owners and the size of the estates.

(a) **The Sample**

It was intended to examine all the *mailo* documents relative to the estates in two of the *gombolola* covered by the Buganda immigrant labour survey.⁽¹⁾ The two *gombolola* chosen were that of Mumyuka of Busiro and that of Musale of Buddu. But the difficulties involved in tracing the boundaries of each *gombolola* on the land maps precluded the possibility of limiting the sample within those boundaries. Finally an area with one well known place in each *gombolola* was chosen as a centre. These areas may be described as follows:

Area (A) Busiro County

The estates examined were those comprised in squares 29, 30, 39 and 40 of African Sheet 86. U. III. N.E.

A well known point within these squares is Sentema Rest Camp.

The area covered by these squares, using Sentema as the centre, is 6 miles to the East, $4\frac{3}{4}$ to the South, $2\frac{1}{4}$ to the North and 1 mile to the West.

The total area of these squares is about 49 square miles i.e. 31,360 acres.

Area (B) Buddu County

The estates examined were those comprised in squares 23, 24, 33, and 34 of African Sheet 93. B. II N.W.

The area covered by these squares, using Butenga as the centre, is $6\frac{3}{4}$ miles to the North, 2 to the East, 5 to the West and $\frac{1}{4}$ mile to the South. The total area in these squares is the same as the area in (A).

1) A study of the problems of immigrant labour in Buganda by the Director and staff of the E.A.I.S.R. cf. "Economic Development, and tribal change," 1953.

In area (A) a total of 62 *mailo* titles comprising 23,688.41 acres were examined. Seven of these titles, equal to 635.60 acres were excluded because they covered an area of the *Saza* of Mawokota; thus leaving for this study 55 titles and 23,052.51 acres. Similarly in area (B) 46 titles comprising 30,436.31 acres were examined. Of these three titles accounting for 1,862.69 acres had been closed by merger into the Crown. This left 43 titles and 28,573.62 acres for the sample. Table 1 summarises the data used in the sample. ⁽¹⁾

TABLE 1.

Distribution of Titles and Areas between the two Sample Areas.

	No. of Titles	No. of Sub-titles	Total Subsisting Titles	Area in Acres
Busiro	55	182	237	23,052.51
Buddu	43	198	241	28,573.62
Total	98	380	478	51,626.13

The size of the sample in relation to the total of the *mailo* estates is given by the following percentages:

- (i) The sample expressed as a percentage of the total area 0.897
- (ii) As a percentage of the total subsisting titles 1.620

In other words, the sample is about 9 acres for every 1,000 acres of the *mailos* owned by the Baganda and about 16 titles to every 1,000 subsisting titles. The sample is therefore of a size to give significant indications as to the present tendencies and trends. ⁽²⁾ A strictly statistical sample might have led to more definite conclusions but it would have been difficult in the time available to collect background data for it.

(1) It may be pointed out that only registered documents have been used for the sample. It was found difficult both to decipher the unregistered documents and to determine the relative merits of the claims already submitted to the Registrar of Titles. Moreover an unknown number of claims are known not to have been submitted. The tendency is that the farther one goes away from Kampala the less are the people aware of the necessity to submit their land agreements within the statutory two months' period.

(2) c.f. L. SILBERMAN, "Logic and Problems of Sampling in Social Research"; *The Rhodes Livingstone Journal*, Number Five, 1947.

In spite of the rather arbitrary selections of these samples, the two areas are in a sense, representative. Area (A) is one of the oldest settled areas with a fairly stable population. The distance from Sentema to Kampala, the commercial centre of the country, is only twelve miles. The agriculture is mainly subsistence with cotton as the main cash crop, but also a certain amount of foodstuffs is produced for sale in the town. A great number of the men are within cycling distance to Kampala where some of them are employed. On the other hand area (B) is part of the country which until 1932 was very sparsely populated. At about the same time the growing of coffee was encouraged and this area was found particularly suitable for the crop. A great number of immigrants from neighbouring territory have come and settled in the area. It is about 15 miles from Masaka the administrative and commercial centre of the district.

(b) The Allotment

Thomas and Spencer among other things state that "of the allottees the three Regents obtained areas of from 45 to 60 square miles each. Some twenty chiefs were granted twelve square miles or over, and another 150 persons became entitled to between eight and twelve square miles. The great majority of the original allottees, however, received one to two square miles each." (1)

The evidence that can be obtained from this sample on the size of the originally allotted estates is not very conclusive because whereas 47 of the titles were issued before 1920, the other 51 were issued after that year, though none were issued after 1924. This means that some of the changes that took place between 1908 and the dates of the issue of the final *mailo* certificate in respect of the titles of some of the estates, cannot be traced. The only record of any of these transfers was in the form of a Certificate of Ownership issued by the *Lukiiko* and signed by the Ministers. This merely recognised the fact that such and such a person was

(1) Thomas & Spencer—op. cit: p. 66.

the owner of an area of land which was part of the land on a provisional certificate issued to another person. It did not state the reasons for the transfer or in case of sale the purchase price. When the final *mailo* certificates were issued to the owners, no reference whatsoever was made as to whether the owner was an original allottee or whether he was a transferee from an original allottee.

The size of the estates as first registered is given in Table 2.

TABLE 2.
Distribution of the Estates by Size when first registered.

	AREA (A)			AREA (B)		
	No. of Estates	Average Acreage	Percent. of total	No. of Estates	Average Acreage	Percent. of total
Less						
than $\frac{1}{4}$ sq. m.	13	55.08	3.11	2	35.83	0.25
$\frac{1}{4}$ sq. mi.	15	167.07	10.87	9	171.60	5.41
$\frac{1}{2}$ sq. mi.	10	340.66	14.78	9	314.96	9.92
1 sq. mi.	15	602.26	39.19	21	628.47	46.19
2 & over	2	3694.86	32.05	2	5462.50	38.23
Total	55	419.33	100.00	43	664.50	100.00

The *mailos* were at first allotted in units of a square mile, but, later, estates of a half and a quarter of a square mile were allotted. The paper allocation could however, not be exact until the actual area staked by the allottee had been properly surveyed. The excess or the shortage was then dealt with according to the circumstances. What is certain is that no estates of less than a quarter of a square mile were allotted. The 15 estates shown in the above table were either excesses of other estates, or were subdivisions made before the registration of the estates.

The size of the original estates in Area (A) throws some light on the way in which a multiplicity of claims based on long occupation or on political rights was met. The adjustment was made by allowing the more influential allottees to stake small claims on particular villages, while allowing them to transfer the rest of their allotted shares

to other areas where the claims were not equally competitive. The *Buganda Agreement (Allotment and Survey)*, 1913, must have eased the work of the *Lukiiko* considerably.

In Area (B) on the other hand, where a vast hinterland occasionally used by herdsmen from Ankole provided ample room for all the claims, the *mailos* were surveyed more or less in their completeness. What is surprising is that this initial advantage has not materially influenced the form of fragmentation that has taken place.

The ninety-eight estates were distributed among seventy-eight original proprietors as follows :

No. owning 1 estate each	68
„ „ 2 estates „	8
„ „ 5 estates „	1
„ „ 9 estates „	1
Total	<hr/> 78

Nineteen out of the thirty estates owned by proprietors with more than one estate were less than one square mile each and only eleven were one square mile or over.

(c) The Present Mailo owners

The year 1920 has been taken as the base year for all the comparative data used in this chapter because it is near enough to the years of first registration of most of the titles. And the year 1950 as the last year for the same purposes because it is assumed that a fair proportion of the instruments of transfer and certificates of succession for that year have been registered.

Table 3 and Table 4 which should be read together summarise the comparative data in the sample. The tables are further explained and discussed in the next two paragraphs.

TABLE 3.

Increases in the number of mailo owners at 10 year periods distributed by size of the estates owned.

Size of Estates in acres	1920	1930	1940	1950
1 to 20	19	67	243	415
21 .. 100	28	62	140	181
101 .. 300	36	48	41	45
301 .. 600	31	31	35	32
Over 600	21	17	17	14
Total	135	225	476	687

TABLE 4.

Changes of the Average sizes of the Estates in groups and the area in each group at 10 year periods.

Size of Estates	1920		1930		1940		1950	
	Average	p.c.	Average	p.c.	Average	p.c.	Average	p.c.
1 to 20	13.71	0.50	12.79	1.66	11.75	5.53	10.86	8.73
21 .. 100	52.12	2.85	48.00	7.76	45.48	12.33	45.63	16.00
101 .. 300	182.14	12.70	172.68	16.06	160.59	12.75	152.77	15.05
301 .. 600	438.45	26.33	487.58	29.28	435.38	29.52	426.24	26.42
Over 600	1416.53	57.62	1434.68	47.24	1210.67	39.87	1247.01	33.80
Total	382.42	100.00	229.45	100.00	108.46	100.00	75.15	100.00

TOTAL NUMBER OF LANDOWNERS IN BUGANDA

Rather inconclusive evidence has been provided about the actual numbers of the landowners to-day. On 478 subsisting titles there were 746 registered proprietors.⁽¹⁾ This gives an approximate ratio of titles to proprietors as 1:1.56. Using this ratio as a multiplying factor, and the total subsisting titles in October, 1952 which was given as 29,502, this gives the number of registered proprietors as 45,800. There are a number of claimants who have submitted their claims, but who have not been registered. From the few titles fully worked out the ratio of registered to unregistered proprietors was about 10:1. There are also an unknown number of

(1) This number includes 59 registered proprietors on instruments executed in 1951 and 1952 and not included in other calculations.

claimants who, in spite of the legal provision, do not submit their claims in the legal two months' period. Taking all these factors in consideration I would suggest that the total number of landowners is between 45,000 and 55,000.

The Registrar of Titles ⁽¹⁾ calculated from a statistically arranged random sample that the number of registered proprietors was in 1952 about 51,000. He also reckons that the number of claims pending in his office would be equal to about one year's work which would work out as about 5,000 claimants. The number of claims still lying about in houses he puts between 1,500 and 2,000. This gives the total number of landowners in Buganda as about 58,000.

Another index to the number of the owners can be given by the percentage of owners to the tax-paying population. This percentage for the *gombolola* of *Musale*, Buddu and of *Mumyuka*, Busiro worked out in 1950 as 10.4%. With the tax-paying population for Buganda given as 323,545 in 1951 this would give the total number of owners as 34,000. But this is a very rough method of estimation.

DISTRIBUTION OF THE ESTATES AMONG THE OWNERS IN THE SAMPLE

Table 3 shows that 86.8% of the owners own estates of less than 100 acres each and Table 4 shows that this number of owners own only 24.7% of the total area in the sample with an average of 21.4 acres. The two tables show that the rest of the land area (75.3%) is owned by only 13.2% of the owners with an average of 427.0 acres.

Table 5 shows how the present owners acquired their estates.

TABLE 5.

Distribution of owners in 1950 by method of acquisition of estates.

Size of Estates	Allotted	Inherited	Given	Bought	Total
1 to 20	4	37	97	277	415
21 .. 100	5	44	26	106	181
101 .. 300	13	27	1	4	45
301 .. 600	8	16	1	7	32
Over 600	3	8	—	3	14
Total	33	132	125	397	687
Percentages	4.80	19.21	18.19	57.78	99.98

(1) Information privately given.

The above table shows that although more than a half of the present owners bought their estates, the majority of these own estates of less than 100 acres. In fact about two-thirds of the owners of estates of less than 100 acres bought their properties; whereas the majority of the owners with estates of over 100 acres, either inherited the estates or were the first registered proprietors.

Table 6 shows more clearly this discrepancy between the amount of land possessed by each category of owners. It should be read with Table 5.

TABLE 6.

Percentage distribution of land owned in 1950 by each category of owners.

Size of Estates	Allotted	Inherited	Given	Bought	Total
1 to 20	0.14	0.93	2.11	5.55	8.73
21 .. 100	1.21	4.23	2.04	8.52	16.00
101 .. 300	4.02	8.39	0.94	1.70	15.05
301 .. 600	6.80	13.25	2.51	3.86	26.42
Over 600	3.89	25.70	—	4.21	33.80
Total	16.06	52.50	7.60	23.84	100.00

THE WOMEN OWNERS

The law makes no discrimination against women as *mailo* owners, though very few were originally allotted any land. And the customs of inheritance whereby a man leaving no male issue is succeeded by one of his clan relations, has not allowed a great deal of property to pass into the hands of women through inheritance. Only a few women can at present raise enough money to buy land. In spite of this the number of women owners in the sample increased between 1920 and 1950 from 9 to 70 and the property held by them from 3.5% to 15.3%. Of the 9 women who held property in 1920, two had inherited small estates totalling 55 acres, while seven were the first registered proprietors. All the seven women were in Busiro which is a special area in this respect in that it contained the palaces of the Kings where royal and other notable women had political power and estates under their control. For this reason the above percentages are rather high, higher than is likely to be the case in the rest of the country.

Table 7, constructed on the same principles as Table 5. gives the distribution of the women owners both by size of estates owned and by the methods of acquisition. The two estates in the over 600 acres group were inherited from H.H. the late Kabaka.

TABLE 7.

Distribution of women owners by methods of acquisition.

Size of Estates	Allotted	Inherited	Given	Bought	Total
1 to 20	2	20	12	11	45
21 .. 100	1	10	1	4	16
101 .. 300	1	2	1	—	4
301 .. 600	—	2	1	—	3
Over 600	—	2	—	—	2
Total	4	36	15	15	70

The regularity indicated by the growth in the numbers of the *mailo* owners over 10 year periods suggests a more or less proportional subdivision of the estates successively applied at different periods. This is not true. The process is rather of a mason chiselling small chips off a stone to give it a shape. Some of the estates entirely break up in this process of paring and trimming but most of them take a definite shape and are stabilised at a convenient figure till perhaps the next generation when the process in some instances starts again. Table 3 illustrates this very clearly, for whereas the number of owners with less than 100 acres each has increased tremendously, the number of owners with more than 100 acres each has changed very little.

(d) The extent of fragmentation

In 1926 it was stated that the estates were breaking up and a class of peasant proprietors was growing. ⁽¹⁾ The consequent increase in the number of *mailo* owners has been shown above, and it now remains to be shown how the actual process of breaking up has taken place.

Of the ninety-eight estates in the sample only eighteen (7.8% of the area) have not changed hands since 1920. Another eighteen estates (18.5% of the area) have been trans-

(1) Department of Agriculture, Annual Report, 1926.

ferred as wholes. Therefore on sixty-two titles there have been minor or major changes.

The factors determining the methods of breaking up are normally inheritance, gift and sale. It is interesting to compare how far each of these factors has contributed to the distribution of the *mailos* at the present time.

THE SIGNIFICANCE OF INHERITANCE

It is shown in Table 6 that more than a half of the total area of the sample was in 1950 inherited, and only about a quarter of the same area had been acquired through purchase. Against this must be held the fact that only 19 out of every 100 owners have inherited their estates whereas 58 out of every 100 owners have bought them. This brings out clearly the limitations of inheritance as an agent of distribution or equalisation of property. As in other countries the *mailo* estates have tended to be inherited by a few people in propertied families. It follows from this that if the birth rate among the landowners and the other members of the community remains the same, the proportion of landowners to others without land will remain constant in spite of successive generations of inheritors. There is corroborative evidence for this from those villages covered by the Buganda immigrant labour survey. It has been found that a pattern of family organization based on the ownership of *mailos* is developing in these villages.

Furthermore, the custom of leaving the major part of the estate to one heir, and distributing only a small proportion among the other children, is fairly widespread. This is true in spite of the fact that the laws of inheritance allow more or less complete freedom of bequest. A study of the sample shows that 40 of the original 98 estates have been inherited before extensive sub-division. Of these 17 or 18.5% of the area have been inherited as whole estates; another 20 estates or 22.0% of the area have been inherited in such a way that the principal heir received more than a half of the estate. In the case of these twenty estates

rather more than two-thirds of the properties was inherited by the twenty principal heirs leaving only one-third to be inherited by fifty-three others. It was only in the case of three small estates each of which was less than 300 acres that the property was inherited more or less equally among the 19 successors.

GIFTS

A clansman, if he were promoted to high office, was traditionally expected to distribute the minor chieftainships under him to various relatives. The satisfaction of this obligation took a new form when *mailos* instead of chieftainships were given to individuals. Small parcels of land were distributed to close relatives or to faithful followers. Sometimes this was done because the *mailo* owner desired to persuade some of his relatives and followers to follow him to the new lands, but more often because the relatives had some claim to the *mailos* received by one of their number, either because they worked as hard as the kinship head to obtain the allotment, or because they had contributed to the payment of the survey fees. Sometimes the gifts are now made to close relations such as wives, sisters and daughters who might not be considered when the owner dies.

The consequence is that gifts play a not insignificant part in the distribution of the *mailo* estates. In 1950, of the sample, 7.6% of the area had been acquired through such gifts and 18 out of every 100 owners had acquired land by this means. All these owners except three were within the groups owning less than 100 acres each.

SALE AS AN AGENT OF FRAGMENTATION

The great increase in the number of the landowners is almost entirely due to transfer by purchase of small portions of land. Further reference to Tables 5 and 6 will show that 57.8% of the landowners acquired their estates by purchase, although this accounts for only 23.8% of the total area in the sample.

In both the areas of the sample sales have followed almost the same pattern. Before 1920 a few whole estates

were sold for ridiculously low prices averaging about 3s. per acre. But since 1920 the majority of the estates sold have been between 10 and 30 acres each; and the sums of money paid at any one time rarely exceeded 1,000 s. Since then not a single whole title has been transferred to one buyer. The three estates, each of more than 600 acres, were parts of much larger estates.

The chief determinant of the size of the estate bought is the amount of money the buyer can raise at any one time. The usual practice is for the buyer to seek to buy the maximum number of acres he can get for the money he has. He may even go to another county where the prices are lower to buy his land. On the other hand the owners get more money by selling small portions to many buyers, because if one offered a whole square mile for sale there would be only a handful of people in the area who could pay anything approximating the economic value of the land. This method of sale has also another advantage. A land-owner may prefer to sell portions of his land to meet personal expenses as they occur.

The motives that compel a man to part with his property or part of his property are many and diverse, but some of them are well-known. It was the payment of the survey fees that initiated the sale of *mailo* land. An owner who had no other sources of income was forced to capitalize on part of his estate to pay off these fees which were considered very high by the existing standards.⁽¹⁾ In other cases the owners sold parts of their estates to encourage other people to settle in their remote estates.

In more recent years *mailos* have been sold to raise funds for such purposes as the purchase of motor cars, the building of houses, or to raise capital to start shops or commercial companies and even to pay for luxurious living. *Mailos* have also often been sold to raise school fees especial-

(1) The fees have been since 1920 Shs. 20/- up to 10 acres and rising to Shs. 270/- for 500 acres and -/30 for every acre above that.

ly for the more expensive boarding schools. The logic of this reasoning is that the son who is entitled to inherit the land would benefit more by getting a good education and getting a good job than by inheriting the land.

On the other hand the main reason why people buy land is to get the social and political advantages associated with landowning. In the first place the mere ownership of even a few acres immediately raises the owner from the status of the mere peasant to that of the recognised class of landowners. Every landowner has the right to sit on the lower councils and the chance of being elected a member of the higher councils through a system of electoral colleges. Secondly, landowning is in many cases the first step to the coveted position of the politically appointed chief. In the recent past a landowner had the right to be appointed as the *muruka* chief in his own area or he would be consulted on the particular choice made. After this first appointment, with ability and some luck, there is nothing to prevent him from rising to one of the highest positions in the Buganda Government.

Further, land in Buganda as elsewhere is a secure form of investment. This is especially important in an economy where other forms of profitable investment either do not exist or are too precarious to attract careful men. The banks are either not sufficiently understood or not trusted by the Africans. The effect of land owning must, therefore have been very great on the saving habits of the Baganda. Its extent is exemplified by the great amounts involved in the sale and purchase of land. For the sample the total amount of money spent works out at Shs. 6/46 per acre for the thirty years since 1920. It also works out at Shs. 266/- per square mile per year for the last ten years.

There is also the need for security of tenure. In Buganda the security of the peasant holder in his holding is almost equal to that of the landowner himself, but nevertheless a man feels more secure if he owns his own land

and therefore anyone with enough money prefers to buy his own plot or estate.

Here and there a man buys land to farm and develop himself but the majority buy with the intention of becoming landlords. In the sample villages covered by the Buganda immigrant labour survey it was found that the average holding of the landowners was about 6 acres as compared with holdings of between $2\frac{1}{2}$ and 3 acres held by the ordinary peasant. It appears, therefore, that the magic usually attributed to ownership of land has not worked very effectively, or not as yet.

THE PRICES

One interesting factor in the land transactions, is the part the clan organization plays in the determination of the price paid for any piece of land. This factor complicates the calculation of the average price paid but it is interesting in that it shows the pervasive nature of a traditional institution which has persisted through both social and economic change. The prices paid range from the economic price paid by a complete stranger through a price slightly reduced for the clan relative to one which is only a few shillings per acre for a close relative. The price disappears altogether when it comes to the relationships of a brother or son. Then the transaction becomes a gift.

Although the land in Area (B) is better land agriculturally than the land in area (A) the average price per acre has been consistently lower in the former area. This may indicate differences in the value of land near the towns and away from the towns or it may indicate the density of population. The relative differences in the average prices in each area since 1925 are shown in Figure 1. This table shows also that the changes in price follow a common pattern which means that they are related to other economic movements in the country. A comparison can, therefore, be made of the average cotton prices since 1925 with the

average prices of two areas taken together. The obvious inference is that the land values rise or fall in relation to the prices of cotton and possibly other agricultural commodities. Some of the discrepancies between the two prices may be explained by reference to other well known events.

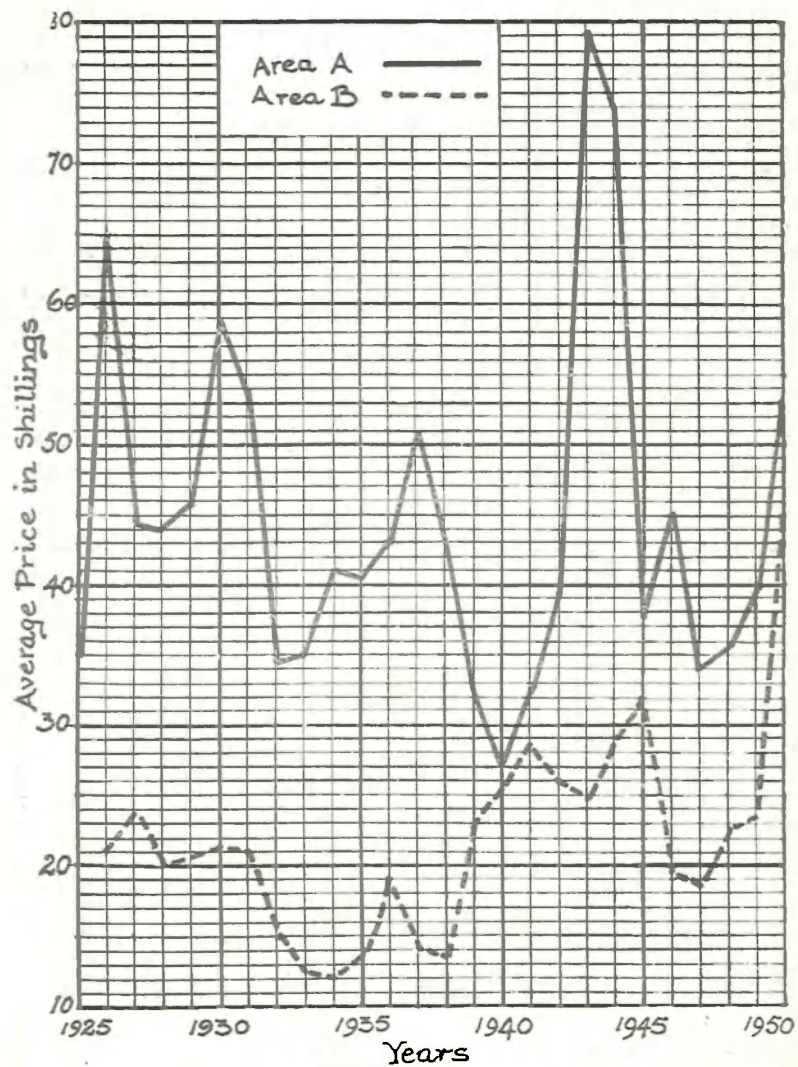


FIGURE 1.

For example in the years 1944 and 1945 a number of demobilised soldiers were using their gratuities and savings to buy land at fairly enhanced prices. But since 1946 the rise has been constant and very rapid especially in the last two years when the rise in the farm prices has been reflected in soaring land values.

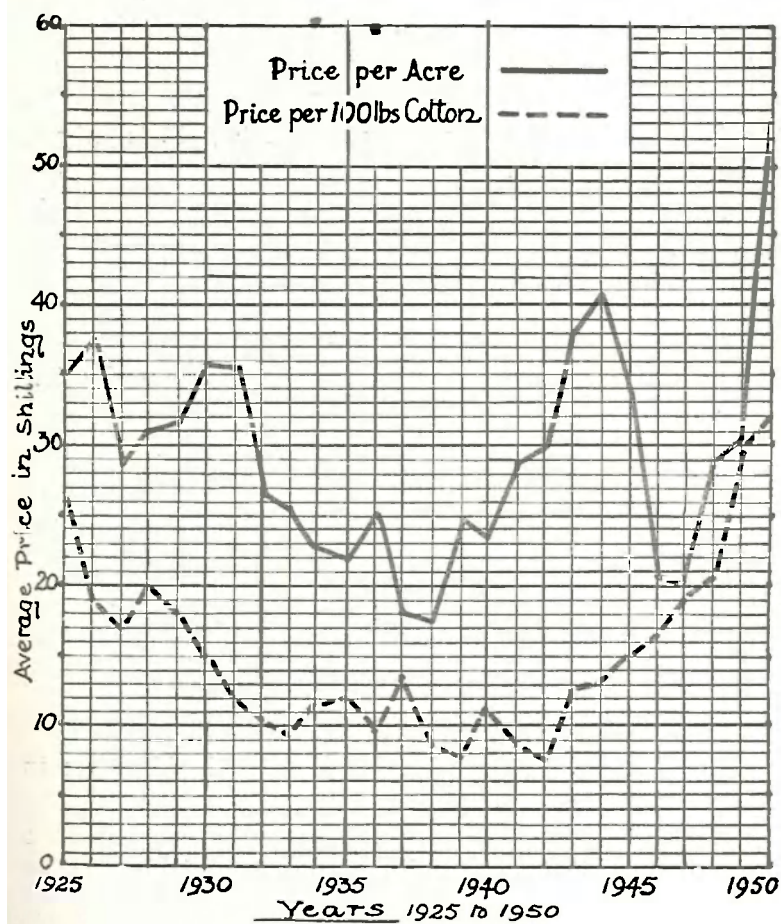


FIGURE 2.

SPECULATION

There is little evidence in the sample to show that land speculation is a widespread practice. ⁽¹⁾ The two instances we have come across are as follows: in 1946 1,100 acres were bought for Shs. 25,000/- and sold for Shs. 27,500/- in the same year: in 1951 25 acres were bought for Shs. 600/- and sold for Shs. 2,500/- in the same month. Inquiries at the Registrar's office elicited the information that about eight people are known to be buying land for sale at a profit. But none of the eight people live entirely by this work. Three of them are government employees; two are employees of private commercial firms and two are traders. This is not to say that the practice does not exist. It is only to suggest that it is occasional and intermittent and indulged in by a few people as opportunities offer.

MORTGAGE

The fact that no approval of a mortgage of *mailo* land to a non-native can be given, unless the right of foreclosure and of sale is excluded, has deterred Indians and other members of the commercial communities with money to spare from investing in this kind of business. The sample shows that only 384.30 acres were still mortgaged to Indians in 1950 at a total price of Shs. 14,000/-. Another 371.70 acres were mortgaged to the Uganda Credit and Savings Bank for Shs. 12,300/-. There was no land mortgaged to other Africans. The total mortgaged was, therefore, not more than 1.5% of the sample.

EXAMPLES

A summarised history of two estates will illustrate in detail how such estates have been broken up. These two estates, one from each area, are among those with the greatest number of registered proprietors. Against this may

(1) Speculation here is taken to mean purchase and sale of one piece of land in the same year and at enhanced price.

be held such estates as one of 3,520 acres which was inherited by one person and has not lost a single acre sold or given away.

(i) The original estate was 3869.72 acres (about 6 square miles). It was registered in 1914. By the time of the death of the allottee in 1926 he had transferred by gift 83 acres in small parcels of land, the biggest of which was 25 acres, to six people. The residue was inherited by six other people, the principal heir (no. 8) receiving 2,508.72 acres, and the other five (no. 9 to 13) receiving 440, 400, 168, 160 and 115 acres respectively. By 1930 (no. 8) had sold 109 acres to 15 buyers at an average price of 60s. per acre and had donated 10 acres to one other person. Between 1930 and 1940 he had again sold 334 acres to forty-four different buyers at an average price of 55s. and had also passed in gifts 27 acres to two individuals. Between 1940 and 1950 he sold 236 acres to twenty-three buyers at an average price of 62s. and had given 107 acres to three individuals. In the meantime (no. 12) had sold 65 acres to 3 buyers and (no. 13) had sold 46 acres to three other buyers at an average price of about 54s. (No. 10) was dead and his property inherited but the successors had not been registered. There were also some other minor changes and the result in 1950 was that there were 80 registered proprietors on the estate, 63 of whom held estates of less than 20 acres each. Another 13 owners held estates of between 21 and 100 acres each. The other registered sizes were 168, 375, 428 and (no. 8) had still over 1,700 acres.

(ii) An estate of 746.70 acres registered in 1914. The allottee had died in 1913 and the estate was divided up in three parts of 446.70, 150, and 150 acres each between (nos. 2, 3, and 4). In 1920 (no. 2) gave in exchange for land in another county 220 acres to (no. 5) and 45 acres to (no. 6) in exchange for land in the same county. (no. 6) immediately donated his 45 acres to (no. 7). Between 1930 and 1940 (no. 5) gave in gifts 18 acres to three people and sold

94 acres to seven buyers at an average price of 30s. per acre. And between 1940 and 1950 he sold 97 acres to 6 buyers at an average price of 28s. per acre. In the same period (no. 7) gave 16 acres to 3 individuals and sold 29 acres to another four at an average price of 30s. per acre, and (no. 2) sold 30 acres to two buyers for 980s. By 1950 the proprietors were as follows: twenty-three held estates of less than 20 acres each with 237 acres between them; two others owned 58 acres; and three had estates of over 100 acres each and accounted for 451.70 acres.

(e) **The Rights of the Mailo Owners**

A mailo owner has considerable proprietary rights in the land which are limited only by the provisions of the *Land Law 1900* as described above. In relation to the peasant holders the rights of the *mailo* owners are further defined by the *Busulu and Envujo Law, 1928* also summarised above. The provisions of this Law are :

- (i) Each tenant shall pay *busulu* of 10s. per annum;
- (ii) and shall pay *envujo* according to a schedule ⁽¹⁾ on economic crops and also 2s. per brew of beer;
- (iii) and he shall render the owner all respect and obedience prescribed by the native custom and law;
- (iv) and the owner shall have the right to occupy any part of the land for the purposes of residing and growing crops.

THE RIGHT TO ALLOT THE HOLDINGS

In relation to the peasant holders this is the most important right of the landowners. A landowner may refuse to allot any portion of his land and re-

(1) The scheduled economic crops are coffee and cotton. And the payments are scheduled as follows :

	plot not exceeding 1 acre. 1st payment.	plot exceeding 1 acre and not exceeding 3 acres Additional payment.
In 5 scheduled Counties	Shs. 2	Shs. 2
All other Counties	.. 4	.. 4

serve it for his own present or future use. He may allot it to whomsoever he wishes and can make whatever boundaries he wishes on giving the holding.

In *Ndazizale vs Womeraka*,⁽¹⁾ for example, the holder, Ndazizale, cultivated an area bigger than that allotted to him and he claimed that he had a right to three acres for the growing of economic crops. The landowner successfully prevented him from doing so. The Judicial Adviser, in his judgment stated as follows :

“The only ground of appeal which requires consideration is the reference to the second schedule of the *Busulu and Envujo Law*. Obviously the appellant interprets this as meaning that because three acres of economic crops may be grown without the landlord’s consent, the landlord is compelled to provide three acres in addition to the area under food crops. This is not so. Section 6 of the *Busulu and Envujo Law* gives the landlord authority to collect additional *envujo* but does not impose on him any duty to provide land.”

It may be pointed out that most of the *mailo* estates were settled by the peasants when originally allotted and each heir to an estate inherits tenants when he comes into possession. Since the rights of the peasants holders are permanent and heritable so long as they are exercised, few *mailo* estates are entirely at the free disposal of the owners.

THE RIGHT OF REVERSION

Section 12 of the *Busulu and Envujo Law* reads: “When a peasant holder shall have left a holding derelict for more than six months with neither wife nor other occupant approved by the *mailo* owner or without the consent of the *mailo* owner the latter shall have the right to give the holding to another, but he shall first report the matter to the *gombolola* chief and obtain his consent. No compensation shall be payable.

Although the right of reversion has been preserved for the landowners, the right of evicting the tenants was trans-

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

ferred to the courts of law. It is a criminal offence to evict a tenant or to disturb "the quiet possession" of a peasant. The offence is punishable with a fine not exceeding 100s. or, in default, to imprisonment for not more than three months. But in most of the cases that come under this head, the courts usually do not impose any punishment, but order that the peasant holder shall be re-installed in his holding or remain undisturbed. At the same time the courts appear generally reluctant to give orders of eviction against the peasant holders whatever their offences are.

THE RIGHT TO OCCUPY ANY PART OF THE LAND

In view of the fact that the rights of the peasant holders in their holdings are so closely guarded by law and custom, it was found necessary to amend the original law to provide for the landowner to occupy some part of his land for the purpose of residing and growing crops. If the part he desires is held by a peasant he must apply to a court of law for an order of eviction against the particular peasant. But the court will not make an order of eviction unless it is "satisfied that there is not sufficient land and suitable area on the land for occupation by the owner." Compensation is granted in such cases against the landowner and usually the peasant is allowed first to harvest his annual crops. This right does not, however, extend to such land as may be required by the landowner for extensive farming or some other economic purpose. Therefore difficulties have arisen with the introduction of mechanization. *Mailo* owners desirous of making use of their land find themselves without any compact piece of land on which mechanized agriculture can be carried out economically. ⁽¹⁾

(f) **The Kabaka's Official Estates**

To compensate the Kabaka for the loss of his rights, and to recognise his superior position, he was allotted 350 square miles as official *mailos* and the late Kabaka, Sir Daudi Chwa II was allotted 150 square miles in his private capacity.

(1) These problems are discussed in **Economic Development and Tribal Change**, ed. A. I. Richards, Chapter VIII.

The three hundred and fifty square miles are spread over thirteen counties but more than a half of the total area is located in the *Saza* of Kyagwe, while certain big estates are distributed in the *Saza* of Kyadondo, Bulemezi, Busiro and Buddu. ⁽¹⁾

All the official *mailos* are owned subject to section 5 of the *Land Law 1908* which has the main provision that a man who has land for his chieftainship will, for all the time that he holds his chieftainship, be allowed to take all the profits from the land except the stones of value in it. He has no right of transfer or dispossession. Also the 416 square miles held by the Ministers and the *Saza* chiefs in their official capacities are held on the same terms.

In the case of the Kabaka's official *mailos*, the Minister for Finance of the Buganda Government is the trustee, but the day-to-day administration of the revenues is deputed by him to a Private Treasurer of the Kabaka who consults the Minister on important matters only. And the administration of the other matters relative to these *mailos* is deputed by the Minister to another official of the Kabaka's household called *Katikiro we byalo bya Kabaka*. This official consults the Minister on such matters as the appointment and transfer of the sub-chiefs who administer the estates.

The following information supplied by the above official explains the system of the government of the Kabaka's official *mailos*:

"All the land of the Kabaka is divided into forty-two divisions (*ebitongole*). Each division consists of either a compact unit of estates or of such estates as are adjacent and can form an administrative unit. Each division is under a chief called *Owekitongole* and is divided into *Miruka*. The size of one such *muruka* (singular) is determined by the Government and may consist of the Kabaka's land only, or of this land, together with other estates belonging to other individuals. The *Muruka* chief is partly an official of the Government

(1) It will be noted that this distribution takes the same pattern as the distribution of the *mailos* to other individuals.

and partly an official on the Kabaka's estates and he paid separately for each of his duties. The *Muruka* divided into villages each of which is under a sub-chief called *Omutongole*. It is this lowest chief who knows all the tenants in his unit and who initially allots the holdings to the peasant holders. His name is often mentioned in the litigation concerning holdings."

The number of the tenants on the Kabaka's private estates was stated in 1950 to be about 31,000, of whom over 14,000 were concentrated in the *Saza* of Kyagwe and another 14,000 in the other four *Saza* mentioned above.

The special obligation of the peasant holders on the Kabaka's estates is to provide one bunch of plantains every month, and banana leaves and fibre when required. Otherwise they enjoy the same rights as the peasant holders on the private land of other individuals. Perhaps the holders on the Kabaka's estates have the added security that their land cannot be sold or transferred.

(g) The Landlords' Stewards (Abasigire) ⁽¹⁾

In the past each chief had one or two deputies either to look after his interests in his village while he was away at the King's Court, or to represent him at the palace in his absence. But the present system of stewards is consequent on the allocation of the *mailos* in widely separated areas and the sub-division of the estates by sale and inheritance. Moreover in its inception the system of *mailo* owning was not separate from the political duties and responsibilities attached to land. The landowner was, and is still expected in some parts, to take responsibility for such duties as keeping the peace in his area, the collection of taxes, and also the representation of his tenants at the lower councils. In some of the earlier laws of the *Lukiiko* the landowners were specifically made responsible for certain duties, including the notification of contagious diseases and epidemics.

These political duties were such that it required a landowner to live permanently on his estate or to appoint

(1) *Kusiiga* = to leave behind and therefore *musigire* is one who is left behind.

responsible person to fulfil them for him. A landowner must therefore appoint at least one steward in every estate owned by him; and where the estate is very big he may appoint any number of them.

A *musigire* may be an old resident in the village with a holding of his own in which he continues to live, but if he is transferred to the village specially to do this job he is allowed to occupy a special holding belonging to the landowner and known as '*ekibanja eky'obwami*' which means "the holding of the chieftainship."

These stewards are usually remunerated by a percentage of the proceeds from the *busulu* and *envujo* which varies from 10% and over. In *Lutalo vs Mukasa* ⁽¹⁾ it was alleged by Mukasa, the steward, that the landlord had agreed to give him a monthly wage of 30s. plus ten per cent. of all the proceeds from *busulu* and *envujo*. On the Kabaka's estates the chiefs, who are a type of stewards, receive for their services ten per cent of all the receipts which they share out among themselves.

(1) Kyadondo Saza Court, Civil Appeal No. 15 of 1950.

CHAPTER IV
THE RIGHTS OF PEASANT HOLDERS

The peasant cultivator in Buganda has certain recognised rights which are protected by law and custom. These rights are inalienable and untransferrable and they are permanent and heritable. The *Busulu and Envujo* Law, 1928 provides for the protections of these rights as follows :

- (i) no peasant holder shall be evicted save for public purposes or unless a court shall have tried the case and made an order of eviction;
- (ii) the court may grant compensation for improvements;
- (iii) a peasant holder shall have the right to cut trees and to get firewood, and the right of access to pasturage, and salt licks;
- (iv) a peasant holder in succession to the holding shall remain in possession;
- (v) no change of ownership of *mailo* land shall affect the status of a peasant in his holding.

To study how far the above legal and other rights have been preserved or varied by the decisions and judgments in the courts, and to try to examine the present position of the peasant holders, an analysis of 333 cases distributed over the last five years has been made from the case file of five selected courts. ⁽¹⁾ Also another analysis of 114 cases from the records of the office of *Katikiro we byalo bya Kabaka* ⁽²⁾ has been made to cover the same five year period.

Considering the absence of published law reports, the consistency of interpretation in certain types of cases is a remarkable proof of the strength and persistence of certain customs in a country where political changes have been great and rapid. But where differences of interpretation occur no attempt has been made in this paper to iron them out. Rather all have been quoted as examples for or evidence of adaptation of customary law to a changing social environment.

(1) The distribution of the 333 cases is as follows:

The Principal Court, Mengo	137 cases
The Saza court, Kyadondo	76 "
The Saza court, Busiro	35 "
Gombolola court, Mutuba I, Kyadondo	34 "
Gombolola court, Mutuba II, Busiro	1 "

(2) See p. 3 above for a description of the functions of this office.

(a) **The Acquisition of the Rights**

The peasant rights are normally acquired through the consent of the *mailo* owner. This is generally easy to obtain because very few of the bigger landowners farm their land, or even farm a big proportion of their land. The general practice throughout the country is to parcel out the land, if it is not already parcelled out, in small holdings of from one to ten acres each and allot them to peasant holders each of whom pays the dues regulated by the *Busulu and Envujo Law*.

This fact was assumed by the above law because no powers were taken to compel the *mailo* owners to have the peasants on their estates; nor was an attempt made to define the size of a reasonable holding. It was taken for granted that *mailo* owners desired to have peasants on their estates and therefore would give holdings of reasonable sizes to each of them.

What actually happens is that when a peasant wants land, that is if he has not inherited it or has moved to a new village, he goes to a *mailo* owner or his steward and asks for a holding. If he is accepted he is shown a holding previously occupied by another tenant. Or he may be shown a part of virgin or regenerated land and is told to start the necessary clearing. If it is an old holding, it is likely to have boundaries fixed by past cultivation or soil erosion or to be known to the residents in the village. Otherwise the boundaries may only be vaguely defined. In neither case are boundary marks or signs set. It is assumed, however, that the holding is limited to such an area as can be developed and cultivated by the peasant.

Where the holding has been previously occupied, the rights of a new tenant are established only if the rights of the former tenant are proved to have lapsed. If the holding is offered to a new tenant and it later transpires or is proved that the previous rights still do exist, the landowner has the obligation to offer the new tenant another holding and the tenant has no claim to compensation for any developments. It has been held that though the landowner is responsible for the disturbance, the incoming tenant is responsible for any damage done to the crops. In the case

of *Nantume vs Mwanje and Mukibi* ⁽¹⁾ in which the landowner Mukibi, had granted possession of a holding to Mwanje, who destroyed the crops of Nantume, the Judicial Adviser held as follows :

“I do not agree with the Principal Court’s contention that the whole responsibility for the damage caused must lie with the landowner. He cannot be held responsible for the wilful damage done by the new tenantthe amount awarded will be equally shared in payment by the landowner and the new tenant.”

But where the holding is part of virgin or uncultivated bush, it is the custom that the rights of the holder extend only to such land as he can bring under cultivation, and all the uncultivated bush belongs to the landowner. It is available for him to grant to other tenants and also open to other tenants to use as grazing. In the case of *Musoke vs Kalinabiri* ⁽²⁾ Kalinabiri was granted an unspecified area in a large tract of land as his holding. Sekisamba pointed out the holding to him without specifying any boundaries. In time Musoke became the owner of the tract of land, and found that Kalinabiri had cultivated crops, including cotton, which were not adjoining to his holding and which could not be said to form part of it. When Musoke sought to confine Kalinabiri within the proper limits he persisted in this extraneous cultivation. The Judicial Adviser held, in giving his judgment, that the holding should be “limited to the space needed for building a house and for the cultivation of what might be called household crops”. ⁽³⁾

The legal act of giving or getting a holding is not easy to define but it consists of one or all of the following acts: (i) the landowner or his steward showing a tenant a holding; (ii) the tenant building a house on it; (iii) the tenant growing crops on it; or (iv) the payment of *busulu*.⁽⁴⁾ By

(1) Principal Court, Civil Appeal No. 66 of 1950

(2) Principal Court, Civil Appeal No. 6 of 1947

(3) The word *kibanja* here rendered as “holding” originally meant the building site only, but it was extended to cover the building site and total area under one peasant holder.

(4) The law provides that a *busulu* ticket should be given every year to the peasant who pays. This ticket is usually the main piece of evidence for the possession of the holding and in some cases it is the only evidence produced in the court.

doing one or all these things a tenant establishes his right in the holding and cannot be evicted except by an order of a court of law.

The tenant must, however, make effective occupation within a reasonable time. In a number of cases it was held that though the tenants were allotted the holdings in the proper manner by the landowners, their rights had lapsed because they had not established these rights within a reasonable time. For example, in the case of *Nakayima vs Kamulegeya* ⁽¹⁾ Nakayima had been allotted a holding in 1947 by Kamulegeya and she started to erect a brick house which was not completed and she did not pay the dues for two years. It was held that the tenant had not established her rights because "she neither built a house on the holding except a foundation of a brick house, nor lived on it, nor paid the dues."

If on the other hand a tenant establishes himself on a holding for some time, the landowner cannot evict him because he did not give his consent in the first place, nor is the tenant required to prove that the consent was actually obtained. This is illustrated by the case of *Semuto vs Sebabungu*. ⁽²⁾ The Saza court of Kyadondo held that because the peasant's holding was only one hundred yards away from that of the landowner, "it was difficult for the landowner to explain the fact that the tenant lived on his land and planted crops on it for a year without his permission and he did not complain to the courts about it". The landowner could have sued the tenant for illegal occupation, if he had wanted to.

Where the consent is given by a steward the rights of the peasant holder are established, even if the steward acted contrary to the express orders of his landlord. For example, in the case of *Nsereko vs Sekajugo* ⁽³⁾ the landowner tried to evict Nsereko from a second holding granted to him by the previous steward, because the landowner claimed he had

(1) The Saza Court, Kyadondo, Civil Case No. 20 of 1950.
(2) The Saza Court, Kyadondo, Civil Case No. 31 of 1950.
(3) The Saza Court, Kyadondo, Civil Case No. 31 of 1950.

given express orders to the effect that no peasant holder should be allotted more than one holding. Judgment given by the *Saza* court of Kyadondo reads as follows :

“There is evidence that the previous steward had power to give holdings to tenants without reference to the landowner. The holding was therefore given to the tenant in the proper manner. He cannot be evicted.”

The judgment was confirmed by the Principal Court at Mengo.

A holding may be inherited by the rightful heir of the holder. In this case custom decrees that the intention to keep or to abandon the holding be communicated to the landowner on the last day of the funeral. Where the heir is a minor a guardian or some other person should occupy or otherwise preserve the rights in the holding by cultivation and the payment of the legal dues, until the heir is of age. In any case the rights accruing from succession should be established within a reasonable time or else the holding may revert to the landowner.

However, the heir may not claim or otherwise establish rights in such parts of the holding as were passed to other people by his predecessor. In two instances it was held by the courts that the heirs could not evict the occupiers of those parts of the holding in which the other people were allowed to settle by the previous tenants. In *Kiwanuka vs Ntwatwa* ⁽¹⁾ it was held by the Judicial Adviser that “once the holding was split up it ceased to be one holding and the appellant’s right over the other portions ceased to exist.” The facts of this case were that Kiwanuka claimed four holdings, which he alleged were all his by inheritance, on the ground that these four, together with the one he then occupied, at one time constituted a single holding occupied by his father. On his father’s death the holding was divid-

(1) Principal Court Civil Appeal No. 1 of 1947.

ed into five portions occupied respectively by his grandmother, his elder brother, his younger brother, and himself. The portions occupied by his grandmother and his two brothers became vacant at the grandmother's death, and the departure elsewhere of the two brothers, and were allocated to new tenants by the landlord's steward. Kiwanuka's claim was, therefore, based on what he claimed was a kind of reversion based on what he claimed was an ancient custom. The claim was not allowed. We may add that this form of division of holdings on inheritance is very rare. The usual custom is for one person to inherit the holding as a whole.

(b) The Nature of the Rights

UNDISTURBED OCCUPATION: In the past the peasant did not live in constant fear of eviction. If he observed the proper political obligations to his chief and maintained correct social relations with the other members of the village he was sure of a reasonable permanency of tenure. A chief might require a peasant to move from his holding if, for example, the chief wanted it for his wife or relative or for an assistant. But the peasant was promptly offered another suitable holding. Or a chief might reduce the holding and give part to a new tenant. The security of tenure was therefore subject to the requirements of the chief and the needs of the other members of the community. But it was not the security of tenure on land that was important, but the undisturbed membership of a social or political unit. Within this unit there was constant movement of the members either because the needs of the group necessitated the movement or because good agricultural practice required it.

To-day the peasant holder is protected by law in one particular holding which he is offered by the landowner.

For example, where a tenant was offered a choice of two holdings, and did not accept either, but occupied a third, he was sued by the landowner's steward and it was held that the tenant could not occupy any holding other than one of the two offered to him. The only other course open to the peasant is to apply to another landlord. But this may be impossible near the townships and trading centres where land is scarce.

As stated above, once established a peasant holder can only be evicted on an order of a court. And although, a landowner can make whatever boundaries he wishes when giving a holding, and can make any increases he desires to it, he cannot reduce it once it is occupied. Where there was evidence that the holder had left most of his holding derelict and the landowner was losing dues unnecessarily, it was held that the landowner could not give part of the holding to another tenant. A different interpretation of the law and custom was made in the case of *Dungu vs Katawoya*.⁽¹⁾ The holder, Dungu, was unsuccessful in restraining the landowner from reducing his holding, part of which was left to be overgrown for a period of 18 years. It was pointed out by the Judicial Adviser in his judgment that "such neglect may be a source of menace to the whole countryside"

The *Busulu and Envujo Law* does not exactly state under what conditions a peasant holder may be evicted by an order of a court of law. The courts, therefore, rarely make orders of eviction against peasant holders except on the application of a landowner when a holding has been left derelict for six months as provided by the law. In

(1) Principal Court Civil Appeal No. 36 of 1950.

Mukasa vs Mpigwa ⁽¹⁾ the landowner applied for an order of eviction against a tenant who had not paid *busulu* amounting to Shs. 25/50 for three years. The lower court granted the application, but the Principal Court at Mengo held that "there was no reason why the tenant should be evicted if he can now produce Shs. 25/50 which was cause of the original case." The tenant was allowed to remain in his holding and the landowner ordered to accept the *busulu* due. But in *Kasuwa vs Mawanda* ⁽²⁾ the Saza court of Kyadondo granted an order of eviction against the tenant who, it was held, "had deliberately refused to pay *busulu*".

Another example of the reluctance of the Courts to grant orders of eviction is that of *Kizito vs Wayononye*. ⁽³⁾ Kizito inherited a holding on which he did not reside for seven years but for which he continued to pay the legal dues. In 1948 notice was given to him by the landlord's steward to the effect that if he did not build a house on the holding he would be evicted. The reason given was that if the tenant did not live on the holding, but in a completely different village, he was unable to fulfil such communal obligations as the clearing of village paths and the improvement of rural wells. In 1949 the holding was given to another tenant and Kizito sued the landowner for disturbance. It was held that a holder could not be evicted for failing to render his communal services so long as he continued to pay *busulu*.

This appears to be contrary to customary rights and obligations because a peasant's obligations include more than the services to the chief which were commuted into money payments by the *Busulu and Envujo Law*. He is bound to join in such activities as are required for the welfare of the whole village.

Where a peasant holding is divided by transfer between two or more landowners the law is that no change of ownership of land affects the duties of a peasant holder or his status on his holding. This section of the law has been

(1) Principal Court, Civil Appeal No. 24 of 1951.

(2) The Saza Court, Kyadondo Criminal Case No. 69 of 1951.

(3) *Katikiro we Byalo bya Kabaka* No. 1/43 of 1951.

variously interpreted by the courts, the decisions being mainly based on the circumstances of the case. Where the holding is divided into two parts more or less equal the peasant pays both the *busulu* and *envujo* to both the landowners. This was the decision in *Sajabi vs Kibuka*.⁽¹⁾ Where one part is bigger than the other, the peasant pays *busulu* to one landowner and only *envujo* to the other. In *Kasule vs Sengendo*⁽²⁾ where on division of a holding between two landowners, the tenant had his house on the land of one and his crops on that of the other, the Judicial Adviser raised the following questions :

“Has the peasant his holding on this particular landowner’s land? If not has he any crops on that land, and if so, what crops? The answer to this is that the peasant has no house on this particular landowner’s land but on a piece of his land he has coffee, banana trees, bark cloth trees, etc.”

He therefore awarded to the landowner only *envujo* “on the crops grown by him to the extent assessed in the usual manner”. But in an extreme instance, that is to say the case of *Waswa vs Namwandu*⁽³⁾ where the coffee plot of one holder was divided between four landowners, it was held on appeal to the Principal Court at Mengo that the holder should continue to pay the same *envujo* of 8s. per annum and let the landowners divide it between themselves in whatever proportions they deemed fair.

THE RIGHT OF REVERSION: The reversionary rights of peasant holders have been respected by the courts where a part of a holding has been occupied by a relative with the holder’s consent. Where, for example, a peasant holder had allowed his son to build and live on part of his holding, and where the son had formally and in writing surrendered that part to the landowner, it was held that the landowner

(1) The Saza court, Kyadondo Civil Case No. 18 of 1949.
 (2) Principal Court, Civil Appeal No. 5 of 1949.
 (3) Principal Court, Civil Appeal No. 55 of 1951.

had no power to allot that part of the holding to another tenant as it did not revert to him but to the holder. This right has, however, been denied to the holder where the holding is inherited after portions of it had been given to other relatives.

GRAZING AND WATER RIGHTS: The right of access to pasturage and salt licks and the right to draw water from running water and springs have been protected by both the *Land Law 1908* and the *Busulu and Envujo Law 1928*. A peasant has therefore the right to graze his goats and his cattle anywhere, on any piece of land which is not under actual cultivation, whether it is part of another's holding or whether it is part of what is called the landowner's bush. The Baganda are not, however, traditionally cattle people. The King and the big chiefs, who always kept very big herds of cattle, were often content to leave their herds in the hands of Hima herdsmen who grazed the cattle in the short grass areas on the outskirts of the Kingdom. A few heads were normally kept at home and these together with other cattle kept by petty chiefs and rich peasants were herded on the hill tops or in between the cultivated areas. Now, whereas the habit of keeping big herds has died down, mainly because of the great loss of cattle which was suffered through rinderpest, many Baganda keep a few head of cattle on their land and graze them on hill tops and in the extensive swamps or anywhere in the villages on virgin or regenerated land.

THE RIGHT TO TREES AND FIREWOOD: The right to cut trees is limited to such trees as are not commercially valuable and to those required for the purposes of building a house for the holder. The trees which have been planted by the holder are his own property so long as he continues to occupy the holding; but they revert to the landowner, together with other improvements, on the surrender of the holding. The right of collecting firewood is similarly limited to such quantities as are necessary for household purposes. These rights can only be exercised either on the

peasant's own holding, or on such part of the land as is not claimed by other peasants as part of their holdings.

THE RIGHT TO REMAIN IN POSSESSION IN SUCCESSION has been described above.

THE RIGHTS OF THE DEPENDANTS OF THE HOLDER : The right of the wife and the children of a peasant holder to live and to remain on a holding are specifically mentioned in the *Busulu and Envujo Law*. The courts have interpreted this section as including all the close relatives of the holder.

A wife has the right to live on a holding on the same terms as the husband so long as her husband is alive and has not surrendered his interest in the holding. Where, for example, a landowner had exempted a tenant from the payment of *busulu* and other dues and later demanded them from the wife when the husband became insane, it was held by the *Saza* court of Kyadondo that the wife had a right to exemption exercised for her husband. The rights of a wife however lapse on the death of her husband in which case the rights pass to the legal or customary heir. In the case of surrender by the husband it is considered that the wife has no separate rights from those of her husband. This point has been specifically commented on by the Principal Court in *Kasirye vs Nabwami* ⁽¹⁾ where the wife had claimed continued possession of coffee plots cultivated by herself when the husband surrendered the holding. The court held that "the custom is that the husband is the proprietor of all crops cultivated by his wife, and if the husband leaves, all the crops revert to the landowner. And the plots in question should similarly revert to the landowner".

Similarly residential or cultivation rights of the other dependants lapse on the death or surrender of the holder. In the case of *Nalumu vs Nalunkuma* ⁽²⁾ the plaintiff,

(1) Principal Court, Civil Appeal No. 101 of 1951.

(2) Principal Court, Civil Appeal No. 41 of 1947.

Nalumu, sued for possession of coffee trees and cultivated land, while the defendant, Nalunkuma, claimed that she planted these coffee trees and cultivated them during her father's lifetime and with his consent. The land had now passed by inheritance to the plaintiff. In giving judgment and reversing the judgments of the lower courts, the Judicial Adviser said:

"It seems to me that the defendant's position is rather similar to that of a temporary resident except that her right is that of cultivation and not of residence. Being only temporary rights and not the more permanent rights enjoyed by a peasant holder, her right ended with that of her father and she has never had the consent of the present owner."

TEMPORARY RESIDENTIAL AND CULTIVATION RIGHTS: When the *Busulu and Envujo Law* 1928 was enacted, temporary residents were not covered. These are usually immigrants into the Country who build their huts anywhere on vacant land or on any holder's land. They are charged a monthly fee of from fifty cents to one shilling. This payment does not give them any rights to land for cultivation. Where such a temporary resident had used part of a holding on which he resided for the purposes of growing foodcrops, it was considered sufficient cause for the holder to evict him. Otherwise the undisturbed occupation of the house only has been upheld by the courts. In *Nasaza vs Wanyana* ⁽¹⁾ it was held that Nasaza who had built a house on Wanyana's holding, and had lived in it for ten years, could not be evicted without sufficient cause. But a temporary resident could not convert his rights into those of a peasant holder after fourteen years of residence on the same plot. This position is further illustrated by the case of *Namakajo vs Sendigya*. ⁽²⁾ Sendigya had occupied a

(1) *Katikiro we byalo bya Kabaka* No. 3/25 of 1948.
(2) Principal Court, Civil Appeal No. 9 of 1951.

small plot, part of a holding for 35 years. Summing up his judgment the Judicial Adviser said:

“The respondent (Namakajo) has satisfied the courts that the appellant (Sendigya) was allowed to occupy this small piece of land by the previous owner by virtue of his being personal servant to that owner and therefore he is not a tenant in the meaning of the *Busulu and Envujo Law*.”

Temporary cultivation rights (*okupangisa*) are also common among the immigrants who rent a plot for a season for a fee in kind or in money. The fee is often equal to about 10% of the produce. The same system is reverted to by Baganda peasant holders where holdings are very small or if a peasant wants an extra piece of land for the growing of cotton or other economic crops. These rights are strictly seasonal and are not provided for in the laws. The transaction is usually by private unwritten agreement and therefore it would be very rare for a case to come to court about them.

In some places the custom of borrowing land is still practised. If the land is borrowed from the landowner he may ask for a fee, but if he does not ask for it a present is expected from the borrower. If on the other hand the land is borrowed from another peasant holder, he cannot ask for a fee but he can be given a present.

SOME OTHER RIGHTS: Among other rights there are examples in two instances where the Muslim community claimed rights in holdings. In the case of *Basajabalaba vs Kibirige* ⁽¹⁾ the community successfully defended its rights against a teacher in a school and mosque built on the holding, where the teacher lived as an employee of the community. In another case a teacher claimed exemption from the *busulu* because he contended he lived on a holding

(1) *Katikiro we byalo bya Kabaka* No. 7/16 of 1947.

that belonged not to him but to the Muslim community. The contention was admitted by the landowner.

(c) **Cessation of the Rights**

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

On the other hand the rights in a holding lapse by non-occupation or neglect for more than a reasonable time. The law limits the reasonable time to six months but it is generally longer. In several instances the courts decided that the rights of the holders had lapsed through non-occupation. For example, in *Kirabira vs Musisi*.⁽¹⁾ Kirabira after living on a holding for 24 years had left it vacant for 2 years, and it was held that he had forfeited his rights by neglect.

Where a tenant expressly surrenders a holding to the landowner it is rare that any conflict arises except where the peasant changes his mind or his successor re-claims the holding. Where land is relatively scarce it is becoming common for landowners to demand written evidence of the surrender from the tenants. In *Lubega vs Kayongo*⁽²⁾, Kayongo succeeded his father, who died in 1945, after the father had surrendered the holding in writing to the landowner a year before he died. When Kayongo claimed it, it was held that he could not inherit it as it had reverted to the landowner.

In case of transfer, or attempted transfer of the rights in an holding by the tenant, two forms of opinions have been reported. In *Lumonde vs Kagwa*⁽³⁾ where there was evidence that Kagwa had transferred his rights to Lumonde

(1) The Saza Court, Kyadondo, Civil Case No. 19 of 1950.

(2) The Saza Court, Kyadondo, Civil Case No. 1 of 1950.

(3) *Katikiro we byalo bya Kabaka* No. 14/43/47 of 1950.

for a payment of 150s and later resold the same holding to another peasant. it was held that Lumonde could not sue Kagwa for the holding, but only for the sum of 150s, as the holder had no right to transfer his rights to another. At the same time the landowner was advised to sue the holder for an offence under the *Busulu and Envujo Law*. For this offence the holder may be liable for a fine not exceeding 100s. and in default for a term of imprisonment not exceeding three months. On the other hand, in *Bukenya vs Lutalo* ⁽¹⁾ it was definitely held that the rights of the peasant who had sold the holding had ceased though the rights of the transferee could not thereby be established without the landowner's consent. The facts of the case were that Lutalo had written a letter transferring his rights to Makumbi. The letter reads as follows :

"I Yakobo Lutalo am no longer able to look after my holding, I therefore give it to Makumbi who will pay the *busulu* for the year 1946 in his own names. I will have no power over the holding from 24.11.45. And I have introduced him to the chief, Bukenya."

Bukenya refused to recognize Makumbi as his tenant; hence the suit from which the above judgment is quoted.

In *Mutanguya vs Waswa* ⁽²⁾ the *Saza* court recognised the purchaser of the holding as the rightful owner. Waswa had transferred the holding to Muteguya for a sum of 1,300s. but he refused to vacate it in the time agreed upon. Muteguya sued for breach of contract and he was granted possession of the holding. Commenting on this decision the Deputy *Saza* chief said:

"It is known that a Court of Law has no right to grant a holding to an individual, but in this case the landowner was asked by the Court whether he accepted the tenant and he accepted him. There the Court derived the right to give judgment conferring rights in a holding to a tenant."

(1) *Katikiro we byalo bya Kabaka* No. 5/26 of 1946.

(2) *The Saza Court, Kyadondo, Civil Case No. 29 of 1951.*

It has been shown above that it is rare for courts to grant orders of eviction against tenants who fail to pay *busulu* or *envujo*. Any dues in arrears are legally considered civil debts, which are recoverable in the usual manner. But the main reason why there is so very little conflict about the *busulu* and *envujo* is that the present rates are within the means of every peasant. They bear no relation to the present value of the land, or the prices of the crops, or even to the rates of the monthly wages to which they were originally related.

Finally, we have found no instance where a landowner prosecutes a peasant under the section of the *Busulu and Envujo Law* which provides that every peasant holder shall render to the land owner "all such respect and obedience as prescribed by native law and custom, especially he shall take good care of the land and of the buildings and shall leave everything in good condition on departure." Probably because the respect is readily forthcoming, and possibly because the landowner has very little to gain if a new tenant finds the holding in good condition, therefore he does not trouble to enforce the requirements as to care of the land.

(d) Some Recent Developments

In a simpler form of society the uses to which any piece of land can be put are definitely limited. The differential value of one piece of land to another is relatively very small if the land can only be used either for building sites, for dwelling houses or for growing staple non-marketable crops. But now, in some parts of the country, land values are rising because of the different uses to which it can be put. On the other hand, it is generally accepted that the *Busulu and Envujo Law* aimed only at the protection of the customary rights of peasant holders. In one instance where a man started to build a brick house on a holding which was on one of the Kabaka's estates he was prevented by the chief. It was held that the chief was in the right because the peasant should have sought special permission to build a brick house. But other landowners questioned have

denied that such restrictions are exercised on their estates.

Where the land is required for the building of shops annual agreements are made between the landowners and the tenants. Some of these agreements are very simple imposing no special conditions. Here is an example quoted in *Kimoga vs Lubowa*.⁽¹⁾

"I Amisi Lubowa hereby agree and we are both agreed with Christopher Kimoga on this agreement. He will give me rent of 4s. per month until he is tired of doing carpentry work. We both agree that he will do only this work, if he wants to erect a retail shop for other goods we will make a fresh agreement. This will be his permanent agreement of the carpentry shop. 4s will always be paid at the end of the month."

The dispute arose in this case when the tenant claimed a right to build a pit latrine for his use. It was held by the *Saza* Court that the tenant had agreed to do all his work inside his shop and had no right to claim more land.

The annual agreements made between the Kabaka's treasurer for the Kabaka and the tenants on his estates are elaborate documents proving for such onerous terms as the following:

- (i) the tenant may not erect any other building except one made of temporary materials;
- (ii) the tenant will be calm and well-behaved;
- (iii) the tenant on vacating the plot will not destroy any crops;
- (iv) the landowner on the termination of the agreement shall have the option to purchase at a fair valuation any building erected on the plot;
- (v) if the landowner does not desire to exercise his option of purchase, the tenant shall remove the buildings two weeks before the date of expiry of agreement or they will revert to the landowner.

How far the lessees feel bound by these terms is very difficult to determine, but in actual fact the African tenants on the Kabaka's estates remain for years on the same plots,

(1) The *Saza* court, Kyadondo Civil Case No. 22 of 1948.

some not even bothering to renew their agreements every year so long as they continue to pay the rents.

Any other rise in the value of the land not attributable to the labours of the peasant holder is the property of the landowner. For example where clay is found and brick fields are made the landowner leases out the plots. But the peasant holder has a right to harvest his crops and to be compensated for loss of agricultural land.

(e) Types of Conflict

The interests of the landowners and those of the peasant holders are in many respects complementary. Few landowners have so far shown the desire or the capacity to develop their estates into farms or plantations. The chief source of revenue from their *mailos* must therefore come from the peasant holders who, on the other hand, find their tenure reasonably secure enough for them to live fairly contented lives. Moreover both the landowners and the peasant holders are limited in the amount of land they can use by the local factors of agriculture: namely the techniques used and the labour available.

But the main reason why conflict is not pronounced is the availability of good land. There is no shortage of land in most places, and therefore conflicts need not arise if a peasant holder can move to the next village and obtain on the same terms land as good as he could have in the village he left. Where there is a shortage, especially near the towns and in the best coffee areas certain types of conflict emerge over the boundaries of the holdings, over the allocation of land, over the rights of reversion and over the occupation of land by the increasing number of landowners who purchase a few acres for their own farming and development.

CONFLICT OVER BOUNDRIES

Most of the litigation over holdings revolves around this question of boundaries. This must be the case in view of the fact that boundaries are normally not marked by any form of boundary marks or signs. This very point has been commented on by the Judicial Adviser in *Musoke vs Kalinabiri*.⁽¹⁾ A peasant

(1) Principal Court Civil Appeal No. 6 of 1947.

holder was granted an unspecified area in a large tract of bush land and the litigation arose when on transfer the landowner desired to confine the holding within proper limits. The Judicial Adviser's comment was that the legal position was "nebulous in the extreme".

Where the land is short, it is in the interests of the landowner to reduce a holding and to give portions of it to other tenants, since the *busulu* he can get from one tenant is limited by law. At the same time with increased production of cotton and coffee and other cash crops the peasants themselves are sometimes desirous of increasing their holdings at the expense of their neighbours. About half the cases over boundaries are, therefore between peasants and other peasants, and only a half are between landowners and peasant holders.

The rules of evidence regarding boundaries are, however, fairly simple. If a tenant is required to prove his boundaries, the best evidence is that of the landowner or his steward, who showed him the holding on allotment. His evidence is usually taken as conclusive proof. For example in *Lwanga vs Lwanga* ⁽¹⁾ the lower courts were reprimanded in the following words:

"If the two lower courts had called in the evidence of Petero Kakuba who allotted the holding to both the litigants they would have come to different conclusions."

If the landowner is not available, or if he is involved in the case, then recourse may be made to other forms of evidence. The evidence of previous holders of the particular holding is very good because they are assumed to have known the boundaries. Also the evidence of old residents in the village, especially if they are neighbours. If any of these people were present when the holding was originally allotted, the value of their evidence is thereby enhanced. In *Kizito vs Kironde* ⁽²⁾ the evidence of the oldest resident in

(1) *Katikiro we byalo bya Kabaka* No. 15/43/40 of 1950.

(2) *Katikiro we byalo bya Kabaka* No. 15/16 of 1947.

the village was considered so valuable that judgment was given in favour of the peasant it supported against the peasant whose claim was supported by the landowner's evidence.

To establish boundaries in dispute with the landowner, previous holders may be called in as witness. But this is valuable only where the landowner does not show evidence that he purposely reduced the holding on re-allotment. Sometimes the boundaries of the adjacent holding may be used as evidence of the holding under dispute, because it is assumed that all the holdings in the neighbourhood must have been originally similar.

Finally, natural landmarks are not necessarily the boundaries of holdings. Where it was argued that a road divided a holding in two, the court held that there was no evidence to prove that there were actually two holdings. The road by itself was not sufficient evidence. And where a peasant holder argued that his holding must extend to the road, it was held that he had not produced sufficient evidence.

In townships and trading centres where land is rented in small shop plots on the basis of written agreements, such agreements are sufficient evidence of the boundaries.

CONFLICT OVER ALLOTMENT

There is nothing in law or custom to deter a landowner from preserving land for his purposes or to allot it to any one he wishes. Where land is becoming scarce or where there are many seasonal tenants, this right of the landowners has led to two fairly widespread practices. The first is that of demanding an initial payment. The amount varies from place to place and from say 10s. to 300s. Sometimes the tenant in return receives exemption from *busulu* for the first year, but sometimes he receives no such exemption. Generally a developed holding with permanent trees costs more than vacant land. The feeling about this practice among both the landowners and the peasants is that it is undesirable and one which some

would not like to mention to strangers; but it is not illegal and there is no example of a legal case or cases over this question. In two instances stewards on the Kabaka's estates were prosecuted for demanding and receiving initial payments from tenants. In one instance the steward received 200s. from two tenants and in the other another steward received 20s. from two tenants. In both the cases it was ordered that the amounts should be paid into the Kabaka's private treasury and should not be returned to the peasant holders. The initial payment is, however, an extension of a very old custom whereby a new tenant offered the chief a chicken, or some other token payment recognising his authority, and asking for the chief's acceptance of the tenant's allegiance.

Secondly, in the areas where immigrants come to grow cotton landowners now often reserve part of their land for the purposes of leasing it out to these seasonal tenants who are not protected by the *Busulu and Envujo Law*. In some cases the rent demanded from the immigrants is as high as one bag of cotton or 50s. per acre. Some peasants deprived of their right to get holdings on a permanent basis feel a certain amount of resentment about this practice, but the resentment is so far not great enough to make it a public issue. (1)

CONFLICT OVER REVERSION

Where a peasant holder has made considerable improvements and has planted permanent economic crops such as bananas or coffee trees he usually attempts to get some return for these improvements if he intends to leave the holding. He may try to transfer it to another peasant for a consideration. Or, alternatively, he may try to preserve his rights in the holding so as to prevent it reverting to the landowner. To preserve his rights he may leave a relative or some other dependant on the holding after he has moved to another holding. In *Semakula vs Musoke* (2) where Musoke had lived on a

(1) cf. "Economic development and tribal change". Edited by A. I. Richards 1953 Chaps—VIII.

(2) The Saza court, Kyadondo Civil Case No. 24 of 1951.

holding for thirty eight years he, in 1947, bought his own land and moved to it leaving a relative on the previous holding. On being sued by Semakula for leaving an un-approved tenant on the holding, it was held that Semakula could not evict the holder's relative and dependant.

Commenting on this case, the court clerk at Kyadondo Saza court, said that the main point of the case was that the woman had lived on the holding with the holder sometime before the tenant had moved. If she were a new person brought in on the point of departure it would have been necessary for the landowner's consent to be sought and obtained.

The landowner's consent to leave a dependant on a holding is usually obtainable easily if the landowner has no suspicion that the tenant is transferring the holding to another for a consideration, or that he is trying to cheat the landowner of his right of reversion. The two cases quoted above are examples of the decisions of courts in such cases. It is generally known, however, that the landowner or his deputy can be made to agree to the new tenant to whom the holding is sold, if he receives part of the proceeds of sale.

(f) Tenants on Crown Land

The tenants on Crown land are legally known as temporary occupants and are governed by the provisions of the Crown Lands Ordinance and the rules made thereunder. Some of the provisions of the law are :

- (i) that the Governor may issue licences to occupy Crown land and to erect thereon any temporary erection;
- (ii) that a licence under this section shall not permit occupation of more than 5 acres; and the licence shall continue for one year and thereforward until the expiration of any three months' notice to quit;

(iii) and that the benefit of a licensee under this section may, with the consent of the Governor, be transferred by the licensee.

Conditions of ejection or eviction are provided for and provisions are made for the removal of the licensees to other suitable areas and the payment of compensation in the case of sale or lease of the land.

Legally the security of the peasant holders on the *mailo* is very much greater than that of temporary occupants on Crown land but in actual fact the possibility of occupants of Crown land being removed in the rural areas is very remote. Near the townships they are liable to eviction as the trading and commercial areas of the towns expand, but the compensation they usually receive is very good. But in the rural areas very little distinction can be made between the peasant holders on the *mailo* estates and those on the Crown land. Some of the temporary occupants feel that they are better off because they do not pay any dues other than the annual rent which is only Sh.1/- per acre and they are not subject to the whims of changing landowners.

CHAPTER V

PRESENT DAY TENDENCIES

(a) An Experiment in Land Tenure

In the preceding chapters two of the trends in the development of the system of land tenure in Uganda have been followed both historically and analytically up to the present day. ⁽¹⁾ We have discussed the types of rights in land which existed in the days before the advent of the Europeans. These rights, exercised both in the control over the disposal of land and in its occupation and use, were :

- (i) Clan rights,
- (ii) The rights of the King and his chiefs,
- (iii) Individual hereditary rights, and
- (iv) Peasant rights of occupation.

The essential feature of the Buganda system is that the above customary rights were not allowed to develop freely in response to the political and economic changes initiated by the establishment of the British power of protection over the Country. A clear and unequivocal settlement of the land question was made by the enactment of the land laws discussed in chapter II. These laws to a great extent changed not only the basic relations of the people to the land but also the relationships between the different groups controlling and occupying the land. From this beginning has evolved a system of land tenure which is partly adopted from systems of tenure in other countries and partly an adaptation of the customary rights to new conditions. Two types of rights are now definitely established, namely:

- (i) the rights of the *mailo* owners, and
- (ii) the rights of the peasant holders.

Some writers have condemned the *mailo* system either because it was an arbitrary decision which was made without a full consideration of the existing land rights or because it gave unfair advantages to a few individuals. ⁽²⁾ But

(1) Some other aspects of the subject are currently being studied by fellows of the Institute e.g., the special problems of urban and suburban areas by A. W. Southall as part of the Kampala Survey, now in progress; the problems of agricultural production by C.C. Wrigley in connection with his history of the coffee industry; the problems of labour in connection with the Immigrant Labour Survey and the political functions of the landowning classes in a study of political organisation by A. I. Richards.

(2) c.f. LORD HAILEY, *An African Survey* (1938) p. 837. and THOMAS & SCOTT, *Uganda* (1935) p. 104.

now that it is accepted, I doubt whether any good arguments can be adduced against the *mailo* system which cannot, with equal force and the same degree of justification, be applied to any system of land tenure in those countries where private ownership of land is still accepted. I suggest the only reasonable criterion is whether the system has justified its existence or is serving a useful purpose. It is difficult to say whether the *mailo* system has completely justified its existence because I am not sure the same can be said about any other human institution. However, the system has served some useful purposes. It has helped to preserve a more or less stable rural society with classes of politically and socially responsible landowners and a basis of fairly contented peasant communities. At the same time these classes of relatively wealthy landowners have been of general economic benefit to the country. The mere fact that they do exist in the African society has acted as a spur to economic effort towards a goal that is attainable.

This form of social security based on a type of freehold tenure and on a defined and legalized form of peasant rights has, however, created problems of its own especially in relation to the need and desire of economic progress. The problems so created can be discussed around two types of individuals: the small landowner on the one hand and the progressive peasant on the other.

(b) The Problems of the Small Landowner

The Land Law of 1908 defined the rights of the *mailo* owners. But it was the Registration of Titles Ordinance of 1922 which determined the exact form which the institution has finally taken. Without a system of guaranteed titles and proper cadastral surveys the *mailo* would have been indeterminate possessions subject to incessant and expensive litigation. No owner would have been sure of all his boundaries and in some cases there would have been no certainty as to whether prior claims to the particular piece of land did not exist. Now, after an estate has been surveyed and the owner has secured his *Mailo* certificate, he has a form of property that no one can take away from

him, at least without compensation. The belief in absolute ownership of *mailo* is so great that many people can hardly believe that even the Government can take away any part of it for public purposes without their explicit consent.

The above ordinance by making all the operations covering the dealings in land both simple and cheap, has made the *mailos* freely negotiable. The owner of a *mailo* can sell it, can mortgage or lease it, can give it or leave it by will to any one who is a native of the Protectorate. He can also lease or mortgage it subject to the consent of the *Lukiiko* and the Governor to non-natives. ⁽¹⁾ This is an economic advantage that the other tribes in East Africa can very well aspire to attain. It is so rare in Africa.

It is this system of registration therefore, that is responsible for the creation of a class of small landowners. The sample has shown that in 1950 of all the landowners 60.4% owned estates of twenty acres or less, and another 26.4% held estates of between 20 and 100 acres each. Therefore 86.8% of all landowners were in this class. Furthermore about two-thirds of these small landowners had obtained their estates through purchase. There are also reasons to believe that this type of landowner is definitely on the increase and that the increase will certainly be very rapid as other opportunities for capital accumulation present themselves in a more diversified economy and also as the pressure on the land increases.

These facts—the size of the estates owned and the method of their acquisition—can be held responsible for the orientation in the attitudes of the *mailo* owners to their properties. In the first place the prestige and glory associated with *mailo* owning and its chiefly status are bound to be considerably diminished by the time they reach the small landowner. His chances of starting on a political career through *mailo* owning are also becoming more and more remote as the ratio of the owners to the political posts rises.

(1) As a matter of policy the Governor's consent is only given in case of small residential plots in or near gazetted townships and trading centres.

Most certainly he cannot keep up the traditional position of the landowner on the income he derives from a handful of peasants on his estate who he finds already established and who pay a fixed sum in rent and dues. ⁽¹⁾ These payments rarely exceed Shs. 20/- per year per holding. A simple calculation will show that no landowner owning less than 100 acres could possibly receive from this source alone anything more than Shs. 500/- a year which is about equal to a year's wages for an unskilled labourer.

Under different circumstances two alternatives would be open to the landowner. He could try to raise the rent or he could farm the land himself. In Buganda neither of the above alternatives are possible because the peasant holders are protected in their holding at a fixed rental. The best he can do is either to circumvent the law or to exploit such of its provisions as are in his favour. If, on taking possession of an estate, the land is not fully settled by the holders, he may reserve parts of it for exploitation by renting parts of it annually to immigrants and Baganda in need of land for the growing of annual cash crops especially cotton and maize. The receipts from this source may range from Shs. 50/- to Shs. 100/- an acre. But the land is quickly exhausted and has to be left for a long period of fallow.

If the land is completely settled he may take advantage of the custom that the peasant holding is normally limited to that part which is under actual cultivation, and all the uncultivated bush belongs to the chief. He could proceed by allotting these uncultivated portion to new tenants some of whom would readily acquiesce in the arrangement. A few would bring civil cases against the landowner, but since he has little to lose except the trouble involved in conducting a case of this nature, the risk is worth taking especially as he can, and usually does, demand an initial fee from the new tenant. The initial fee varies from as little as Shs. 10/- to as much as Shs. 500/-.

(1) The need for an increase in rent or in the dues (*Nvujo*) has often come up for discussion at several sessions of the Lukiiko in the last few years. Usually these resolutions are turned down either by the Lukiiko or by the Protectorate Government as involving further burdens on the peasant holders.

Sometimes he may apply that section of the *Busulu and Envujo Law* which provides for his reversionary rights if a peasant is only temporarily absent. By this means he can offer a developed holding to a new tenant for a big initial fee.

It is clear, however, that any of these practices has very limited possibilities as a means of providing a regular income for the landowner. The small landowner can only obtain economic returns from his land by developing and farming it himself. In this also he is faced by the presence of the peasant holders on the land. Even if the estate is not fully divided up in holdings the arrangement may be such as to make it impossible for the owner to secure one compact tract of land that could be farmed economically. This is especially important if mechanization is to be used. Since he cannot transfer the peasants to other holdings or group them in any other way he is almost helpless in his desire, or his need, for economic progress. Here is a *prima facie* argument for amending the agricultural legislation to provide for the landowner to group his tenants or to rearrange their holdings in such a way that improved agricultural methods can be applied for the benefit of the landowner and the peasants.

We have also suggested that the small landowner uses all his capital resources to secure a piece of land. If so, then he has not the necessary capital to develop it even if it is not occupied by the peasants.⁽¹⁾ In other words he has gained the security he desires but he cannot raise himself from the economic status of a peasant holder. His holding is in many cases no bigger and no better than that of his peasant neighbour. He remains in the vicious circle of subsistence agriculture.

(c) **The Progressive Peasant**

The small scale peasant holder is easily satisfied with the present system. He has security of tenure so long as

(1) The Uganda Credit and Savings Bank was opened by the Government in 1950 to provide agricultural and other credit for Africans. Its general effects have not been felt yet.

he occupies and cultivates his holding. His rent and other dues were fixed by law some years ago at a figure which for a long time has ceased to be related to the economic value of the land or the value of the cash crops produced. His holding can be inherited by his successors. The size of the holding is reasonably big to produce the household requirements both in food and money. In other words he can do anything on his holding although he cannot sell or mortgage it.

But the progressive peasant is faced with difficulties. If he develops his holding and it increases in value, he is not allowed to mortgage it or any part of it so as to raise the necessary capital for further development or even to get himself over a difficult time. If he chooses to leave this holding all his improvements including the house will revert to the landowner. He may, therefore, be forced by the circumstances to remain in occupation against his will and his better judgment so as not to lose the value of his past labour. Thus opportunities may be lost and any desire for adventure into new lines of agricultural production may be damped because he cannot transfer his acquired wealth to a new place.

If he wants to increase the size of his holding it may be very difficult for him to get the extra land. His landlord has no land at his disposal, and if he has, may not be willing to lease it at an economic rent. The difficulty arises out of a situation where most of the land is tied up in peasant holdings. What remains at the disposal of the landowner is often so small that he may want to exploit it by demanding exorbitant rents. The final effect of this may be that a landowner who has neither the capacity nor the means to develop his land cannot allow others to do so. There is need, therefore for forms of tenure other than the customary one of peasant holders. These forms may grow out by themselves but it is more likely that they will be initiated by statutory action.

A related difficulty has arisen in some places between the landowners and the more capable peasant farmers. In

the more specious days of the past the peasants, with the consent of the landowners, brought under permanent cultivation especially coffee areas bigger than the three acres allowed for economic crops to peasants without special consent of the landowners. The rent agreed upon at the time was usually very small but there were no written agreements. Recently some of the landowners have continuously raised the rent with every increase in the prices of coffee. In some places the rent is as much as Shs. 20/- per acre. The peasant may be faced with the choice of either abandoning his extra trees or of paying what is demanded. Sometimes this becomes a difficult situation because the landowner on his part cannot dispossess the peasant without giving compensation for the trees as the land was originally cultivated with his consent.

The peasant has responded to the legal situation in several ways. Although he may not do so legally he may privately mortgage his house especially if the roof is of corrugated iron sheets. If he defaults the lender may pull down the house and remove the materials because he cannot take possession or sell it.

The peasant may also privately sell the holding and its improvements and thereby cheat the landowner of his reversionary rights. Here he depends on that section of the *Busulu and Envujo Law* which provides that a peasant can leave his holding temporarily to a relative or some other person approved by the landowner. Since clan relationships are so wide and so tenuous it is not easy for the landowner to prove in court that the person left in the holding was not actually a relative. In this case the *busulu* ticket is written in the names of the original holder till such time as the new holder can make his own arrangements with the landowner. Or the landowner may be circumvented with the help of the ubiquitous *musigire* (landlord's steward) who for a small consideration will overlook the transaction and accept a buyer of an holding by issuing the *busulu* ticket in his names. In this way sometimes the economic value of the holding has been obtained.

Finally, the problems of fixed tenure in peasant holdings may become the problems not of the peasants and the landlords alone but those of the whole country. The form of agriculture in the past was what Professor Hancock calls "the extensive rotatory agriculture with long periods of bush fallowing".⁽¹⁾ Now, if the peasant is permanently fixed in one holding and continues to use the land in exactly the same way as his ancestors, the soil is bound to become exhausted and eroded. The problem is whether it is economically possible to increase the productivity of the land with scientific methods of farming and the provision of cheap capital if it continues to be divided in the type and size of holding that now exists.

At least it is difficult to apply mechanized farming economically in the present set-up. And those, like Professor Arthur Lewis, who argue convincingly for the need of immediate introduction of cheap capital into the rural areas do not seem to have faced the problems of its management in the present social and agricultural context.⁽²⁾ It also remains to be seen what part the now very popular co-operative movement will play in the projected rationalization of agricultural methods. Therefore, if through increased population pressure the number of the holdings continues to increase and their size to decrease, the time is not far distant when the solution of the problems involved will cause disturbances to the existing social organisation such as no government will be anxious to face.

This review at least has shown that the problems of land tenure in Buganda are no longer the problems of definition but those of adjustment. In the other provinces of Uganda, although the right of the African population to the occupation and use of land has been recognised, the individual rights are not as yet defined, nor has an attempt

(1) W. K. HANCOCK *Survey of British Commonwealth Affairs* (1942) Vol. II Part 2 p. 238.

(2) W. ARTHUR LEWIS, in "Developing Colonial Agriculture" *Tropical Agriculture* vol. xxvii No. 4-6 April-June 1950.

been made to replace the existing primitive forms of tenure by other legalized forms. In Buganda, on the other hand, the need for definition disappeared fifty years ago when the *mailo* system was introduced. The rights of the *mailo* owners and those of the peasant holders are clearly defined and firmly established. But the strength of any system can only be measured by its adaptability. Whether the *mailo* system will be adapted to meet the changing social and economic environment remains to be seen. If it does not adapt itself it is bound to disappear.



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serve it for his own present or future use. He may allot it to whomsoever he wishes and can make whatever boundaries he wishes on giving the holding.

In *Ndazizale vs Womeraka*, ⁽¹⁾ for example, the holder, Ndazizale, cultivated an area bigger than that allotted to him and he claimed that he had a right to three acres for the growing of economic crops. The landowner successfully prevented him from doing so. The Judicial Adviser, in his judgment stated as follows :

“The only ground of appeal which requires consideration is the reference to the second schedule of the *Busulu and Envujo Law*. Obviously the appellant interprets this as meaning that because three acres of economic crops may be grown without the landlord's consent, the landlord is compelled to provide three acres in addition to the area under food crops. This is not so. Section 6 of the *Busulu and Envujo Law* gives the landlord authority to collect additional *envujo* but does not impose on him any duty to provide land.”

It may be pointed out that most of the *mailo* estates were settled by the peasants when originally allotted and each heir to an estate inherits tenants when he comes into possession. Since the rights of the peasants holders are permanent and heritable so long as they are exercised, few *mailo* estates are entirely at the free disposal of the owners.

THE RIGHT OF REVERSION

Section 12 of the *Busulu and Envujo Law* reads: “When a peasant holder shall have left a holding derelict for more than six months with neither wife nor other occupant approved by the *mailo* owner or without the consent of the *mailo* owner the latter shall have the right to give the holding to another, but he shall first report the matter to the *gombolola* chief and obtain his consent. No compensation shall be payable.

Although the right of reversion has been preserved for the landowners, the right of evicting the tenants was trans-

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