CONDOMINIUM LAW AND PRACTICE IN UGANDA; UNDERSTANDING THE PRACTICAL ASPECTS AND ITS IMPLICATION TO RIGHT TO HOUSING IN THE GROWING CITIES.

by

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1 INTRODUCTION:

1.1 In its real sense, following the relative peace and spur in economic growth and the unmatched population growth, there has been undue stress on land as a factor of production. This had been largely precipitated by the uneven infrastructural Development countrywide; with major developments taking part in central Uganda and a few selected upcountry town centers now turned into cities. This pressure (or stress) necessitated a need to design a robust real-estate Development pattern that can accommodate the growing development pattern. In addition to also to accommodate the growing numbers on an ever decreasing accessibility and affordability of land as a factor of production and source of livelihood. This to many can be achieved through setting up, developing, and running Condominium estates.

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1.2 Within the legal realm, a Condominium denotes a means of ownership\(^3\) on whichever tenure fee Simple\(^4\) or fee tail\(^5\) of a single and or one family unit in a multi-building structure. This concept is coupled with joint ownership of an individual interest in the other common area with other co-sitting owners in the undivided interest in the land and other parts of the structure as a tenant in common with other unit owners.

1.3 The Uganda Vision 2040 and the third National Development Plan for Uganda have recognized the importance of urbanization as a force for socio-economic transformation across the country and in particular the need for regional and strategic cities beyond the capital to drive the urbanization agenda. As part of this, the Government of Uganda recently by approval of a simple majority in Parliament ahead of the 2021 general elections, approved and created fifteen cities in the country, in addition to the capital city of Kampala which are now fully operational, these cities are based on regional balance and they include inter-alia, Arua, Mbarara, Gulu, Jinja, Fort Portal, Mbale, Masaka, Lira, Soroti, and Hoima. These cities operate under the Local Government Act and the guidance of the National Urban Policy\(^6\) Astrid R.N. Haas further contends that many of our poorly managed cities do not support a sufficient investment climate, resulting in the absence of firms and employment opportunities for a rapidly growing labor force thus pushing urban dwellers into informality and affecting their livelihoods and overall firm productivity.


\(^4\) Article 237 of the Republic of Uganda creates various forms of tenure which include Mailo, Free Hold and Customary Tenure which are Fee Simples by virtue of their being held in perpetuity.

\(^5\) Conversely therefore, while also recognized is a use of lease hold it’s a Fee tail tenure because of its unique features including certainty of duration, a condominium setting on a Fee-tail while expire at the lapse of the lease and the reversionary interest including all the developments therein will become the property of the proprietor of the reversionary interest.

\(^6\) Astrid R.N. Haas: Unleashing the power of urbanisation for Uganda’s new cities • Urban Advisor astridrnhaas@gmail.com Wednesday 3rd March 202
Conversely, whereas, creating these cities was just the first step – making them engines for growth and “hubs of happiness” requires planning and proactive policies to enable job creation and rising living standards coupled with consideration of the right to decent housing and high standards of living that met the city status. This as the inter-Ministerial committees set out to design policies that will make these cities amiable to the growing problems relative to land as a scarce resource, there is a need to have a discourse on how the dwellers in these cities will be housed, as both an immediate and medium-term priorities for new cities in Uganda to develop an action plan for future reform and align them with the current legal framework that declared the all of Uganda a planning area, this could be achieved partly by increased awareness campaigns coupled with the dissemination of information regarding condominium laws on the nature of separate ownership of individual units in a multiple unit building and areas designated for common ownership by the owners of those units.

Condominium Law, therefore, offers the following an opportunity for persons to individually own a percentage of the stock of the corporation which runs the real estate (as we shall explore later on in this paper); by having proprietary ownership of an apartment in one’s own right, together with the common areas. Learned Author Cribbet in the early years of the development of this concert noted as follows; -

“he who owns a component termed as a unit in a condominium property is free to mortgage his own unit as against the default of the other co-owners as

7 See Section 3 of the Physical Planning Act, 2010.


no creditor or banker can foreclose on the entire property.”

1.6 In Uganda, Condominium estates were originally understood as a form of real estate development that allows individual ownership in a multiple unit building designated by separate ownership with a partial collective sharing in the ownership of the common areas. Comparatively, in Kenya, its referred to as registered and developed properties in strata, which facilitates registered units in high-rise buildings to enable unit owners, who would otherwise be barred by the planning laws and regulations, to acquire strata titles by registering architectural plans.

2 Historical Background and Evolution of condominium Properties.

a) Global perspective

2.1 According to UNECE\textsuperscript{10} in its 2019 guidelines on the management and ownership of the condominium housing,\textsuperscript{11} condominiums were born out of the transformation of the political and economic systems in Central and Eastern Europe and Asia; following the collapse of the Soviet Union and the Berlin wall.

2.2 UNECE argues further that, these transformations necessitated a change in all sectors of the economy including the housing sector to be able to catch up with the growing Marxist economies which saw the First Industrial and Factories Revolution. Following the revolutions, many workers both professional and casual laborers left their home villages to come and settle in cities where these Manufacturing Factories had been built.

\textsuperscript{10} UNCE- United Nations Economic Commission for Europe, set up in 1947 as a means of enhancing effective economic and technical expertise in the set norms, practices, standards and conventions to facilitate Economic prosperity

\textsuperscript{11} ECE/HBP/198-United Nations Geneva 14\textsuperscript{th} Nov-20202 at page 11
2.3 It urged that these new dynamics in the economy rules favored private properties to invest in the provision of rentable space to offer accommodation for the growing numbers of both technical and casual laborers. With the growing increase in the democratic election of the government schemes, this saw a need for market-based regulation thus the creation of legal frameworks to support the adoption of new, private forms of management, maintenance, and ownership of multi-apartment workers residential buildings/condominiums.

b) Domestic perspective

2.4 In the African context and particularly in Uganda; following the 1902 Order- in Council, many laws became applicable to Uganda as a British protectorate. These included laws on registration of land, approval of building plans under the public health laws and the country and town planning Laws, and statutes of general application particularly those drawn from India. At this point in time, a large section of the economy was manned by persons of Asian Extraction: in a conversation with the late Hajji Nasser Ntege Ssebagala in 2018\(^\text{12}\) he informed me as follows; -

a) Indian workers within the Ugandan economy often stayed near their businesses, they were seen as being segregative who never wanted to intermingle with the natives in the villages. As a result of this, they started constructing flats right above their residences as accommodation facilities while they worked and traded on the ground floor. Those that did not want to stay in the CDB-Central District Business pushed for the establishment of the Uganda National

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\(^{12}\) *Nasser Ntege Ssebagala (RIP)* was a Ugandan Businessman, politician and family friend of the author who had a lot of knowledge about the Indian Business model having worked with the first Indian Business men in Nakasero Kampala as their worker and later acquired or was vested with the First Blackman owned supermarket at the expulsion of Asians called **UNGATIC Ltd** See [http://www.wikepeaid.com//ntegeSebagala](http://www.wikepeaid.com//ntegeSebagala) last accessed on 21\(^\text{st}\) June 2021.
Construction Company in the early 1970s which set up the first-ever semblance of Condominium properties in Uganda as the *Bukoto Brown Flats* and the *Bukoto White Flats*.

b) Upon completion of their construction, the said initial housing estates in Uganda were largely bought and occupied by residents of Expatriates and other High-Class natives, this was while the native Ugandans who desired to live in such setups went to stay in Estates on leased properties in Nsambya Catholic Housing Estates and more recently Nalya Housing Estates. The Ssebagala narrative is corroborated further by the fact that before divesture of public assets, public parastatals had “flats” constructed for the accommodation of their low ranking staff like the Police senior staff barracks at Nsambya Police Barracks, and those for the Lecturers at ITECK\(^\text{13}\) and Makerere University Wandegeya Flats: \(^\text{14}\).

c) In some cases, the estates were creatures of non-renewable leasehold interests. Most of these 49 leases have since expired and the controlling authorities particularly for Nsambya Estates have not responded to the applications for the renewal; leaving many occupants in uncertainty and disparity. Whereas these are mostly bungalows, some of the occupants had converted their bungalows by developing them into storied flat units to meet the growing demand for a decent accommodation within the Ggaba road cosmopolitan hybrid dwellers\(^\text{15}\). In which places many prospective first-time homeowners are

\(^{13}\) ITECK is present day Kyambogo University Previously known as the Institute of Teacher Education.

\(^{14}\) See Fredrick Omolo-Okalebo and Hannington Sengendo perspective on city planning of post- independence Kampala: The Emergence of the Metropolitan growth model and the Hexagonal cell.

\(^{15}\) See ALEX Matovu – Guest writer- Monitor News Paper June 2021- What you must know about Condominiums. //htpp-www.monitor.co.ug last accessed 27\(^\text{th}\) June 2021 at 11: 40 PM.
appreciating the need to purchase a condominium as opposed to a fully-fledged standalone house.

2.5 **It was not until 2001**, This followed the growth in the real estate business and the boom in private players like Jomayi, Akright Estates, Kasulu Property Masters, and East Land Estates Agents caused cadastral sub-division of so many properties largely sold to them by beneficiaries of the former deceased owners. Following the growing extinction of these free plots, the original purchasers of the fragmented plots to meet the growing demands for (3) descent and adequate housing and for purposes of maximizing utilization of the small spaces, are now either by themselves or through joint venture investments now offering, developing and constructing condominium units both for sale and renting to meet the growing demands by city dwellers and the growing number of expatriates working in different segments of the labor, technical and diplomatic workplaces in the metropolitan areas of Kampala which previously were composed of Kampala City, Mengo Municipality, Nakawa Township and Kawempe Town but now composing of the original three counties that made up Buganda of Kyadondo, Mawokota, Busiro and now covering Kyaggwe.

2.6 All the land in the condominium project is owned in common by all the homeowners. Usually, the exterior maintenance is paid for out of homeowner dues collected and managed under strict rules. The exterior walls and roof are insured by the condominium association, while all interior walls and items are insured by the homeowner.18


17 Alex Matovu (Supra) urges that such investors, in their attempt to satisfy the market demands of their prospective demand for residential houses have begun to tailor their offerings to the reality that most people would rather own the apartment than rent it.

2.7 Condominium arrangements have largely been embraced by people in the diaspora because they had challenges such as fraudsters and ungrateful relatives\(^\text{19}\) who time and gain who divert their construction money for their benefit thus increasing the foreign currency remittances and foreign domestic investment avenue which helps such persons with dual citizenship\(^\text{20}\) to be able to beat the draconian laws that limit foreigners from owning land under certain categories of land tenures.

2.8 United Nations in 1965, while commenting on the continuous and impressing growth of the CDD\(^\text{21}\) highlighted the need for considered planning efforts and firm policymaking to meet the standards of the rising prosperity with the increasing standards of living, rapid population growth necessitated copying other development models in *vallingby* which turned their huge suburbs\(^\text{22}\) into Perry’s Neighborhood units idea combined with Raymond Uwin’s method of residential layout for houses combined in blocks as a symbol of planned community\(^\text{23}\) which in Uganda we now call Condominium Estates.

\(^{19}\) See Umar Nsubuga and Dalton Kizito, *invest in condos to enjoy the quiet environment*, New vision newspaper, April 10\(^{\text{th}}\) 2021

\(^{20}\) Article 237 (2) (c) of the Constitution and Section 40 (1) of the Land Act, also See Lakeside City Ltd v. Sam Engola & Others H.C.C.S. No. 281 of 2010,

\(^{21}\) Central District Business.

\(^{22}\) Frank Tumusiime (2014) Emerging Trends on Condominium Housing sector in Uganda (Unpublished)

\(^{23}\) See Eran, BJ Gordon (supra)
3. **Condominium Property in Uganda, Unpacking the real law and practice**

Law practice and perspectives

3.1 Uganda being a state party to the United Nations is bound by several UN Instruments to provide, protect and offer safeguards to the right to adequate and decent housing to every individual, family, and communities wellbeing. As a means of finding decent accommodation in areas of ones’ preference that were already taken by the earlier developers and settlers.

3.2 Uganda’s social and economic policies have largely been under the stewardship of the NRM/A government. The divesture of public Enterprises and the sale of the former Civil servant’s quarters as set out in the 1992 National shelter strategy with its enabling approach, witnessed government efforts to address the security of occupancy and tenure within the constitution and later the legislative policy Framework. Parliament was directed or obliged by the Constituent Assembly to work within two (2) years from the date of its sitting to come up with a Legislative law to address the land question of among others persons termed as lawful and bonafide occupants. Later, in 2001, the Condominium Property Act was enacted as a legislation aimed at enabling owners of the newly acquired or existing flats to hold property in the housing units. This was with a no danger discriminative

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24: H. Onaria (2007) guaranteeing the right to adequate Housing and shelter in Uganda. The case of women with disabilities HURPEC working paper No.


approach in that both male and females can acquire, dispose of and inherit own housing units in flats that both male and females can acquire, dispose of and inherit own housing units in flats.

3.3 **International Law:**

As noted above, Article 25,\textsuperscript{27} of the UDHR reserves the right to a decent standard of living. Onaria\textsuperscript{28} argues that conceptualizing this right would mean ensuring that citizens attain the right to an adequate standard of living which informs a social-economic right as envisioned by the ICCPR,\textsuperscript{29} and the ICCRC,\textsuperscript{30} the African Charter on Human and People’s rights, and other specific International instruments like the CEDAW\textsuperscript{31} also provides for the right to adequate living conditions, thus affirming housing as a right, thus this may include the right to own a decent Condominium Housing Unit.

3.3 **Domestic Legislation**

**Review of the Law on Condominium Property Law in Uganda:**

a) The 1995 Constitution as pointed out hereinabove Article 26 recognizes the right to own property by all persons either solely or in association with others subject to the law. Article 26 (2) further

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\textsuperscript{27} United Nations Declaration of Human Rights UDHR-1948:

\textsuperscript{28} H. Onaria (Supra)

\textsuperscript{29} International Convention on civil and political rights and International Convention on Economic Rights (Articles 14,18 a) and 16 respectively.

\textsuperscript{30} General comment No. EC/04/2000 report of special Rapporteurs on adequate housing as a component of the right to adequate standard of living EC/CN4/2005-March/2005 with periods ranging above 5 years to 49 and 99 years but not in Fee tails of Mailo or Free holds held in perpetuity.

\textsuperscript{31} Convention on Elimination of all forms of Discrimination against Women
provides a safeguard that no person shall except in accordance with the law and subject to adequate compensation be compulsorily deprived of any land or property. To this end, as noted subject to the Law no actions and Foreigners can acquire land as determine fee tails under leasehold.

b) According to M/S Spectrum Real-Estates solutions Condominiums or Condo is a new trend in Uganda a developed concept being adopted in a town setting where land is increasingly becoming expensive and diminishing? Condominium properties in Uganda are regulated by the Condominium Property Act 2001 and the varied regulations made thereunder, until recently the law was amended by the Condominium Property Amendment Act, 2012 which now allows developers or companies to engage in the construction of apartments and sell them as is and give the buyers condominium certificates of titles as units of individual ownership. In its long title, Parliament clearly stated hereinbelow, its thus pertinent that as a real estate legal practitioner, dispute arbiter, or real estate developer has a clear understanding of the condominium property law. The long title states

“An Act to provide for Division of building into units and common property to provide for individual ownership of those units by the issuance of the certificates of titles in relation to the units provide for ownership in common use, management of the units and common property and matters connected therewith.”

Creation of Condominiums

3.4 Existing Building and new developed Units:

32 Article 237 (3) of the Constitution of the Republic of Uganda. Also see section 3 (5) of the Land Act, cap 227 as amended.

33 www.spectrumproperties.co.ug. Condominium law in Uganda last accessed on 6th/15/2021 at 8.30 a.m. units and common property and matters contracted therewith.
a) Under section 3 (1) of the Act, a proprietor or developer or planned buildings may divide the building into 2 or more units by registering with the registrar who according to the interpretation section is the commissioner of land Registration, a condominium plan in accordance with the law, and under section 12 (1) and (2) a boundary of the unit is the floor wall and ceiling measured against the beam and the finishing material of whichever descriptions, including doors and windows.

b) Section 3 (2) -(5) set out the procedure of converting an existing building Inter-alia that;

i) The plan shall be presented for registration with the Registrar in quadruplicate and to indicate the number of units into which the building is divided.

ii)

iii) Developer while developing the plan is required to indicate whether the plan will be developed at once or in successive phases.

iv) Where the plan is to be developed in phases, it shall be known as a phased condominium plan.

v) Where it’s a phased condominium plan section 3(5) obligates the developer to indicate the timetable at which development of the various phases shall be undertaken.

c) Under section 10 (1), it’s the requirement of the law that the condominium plan must conform to certain requirements, and where under 10(2) it includes residential units, it shall to the satisfaction of the Registrar include delineations of the boundaries of the areas that are to be leased or used by each individual, unit owner and collectively
with others as a unit Factor covering the common property, to this End the plan shall Inter-alia conform to:

i) It’s heading to be described as a condominium plan.

ii) A clear indication of the deterioration of the external surface boundaries of the parcel and the location of the building about them.

iii) The plan should include a drawing illustrating the units and distinguishing the units by numbers or other symbols.

iv) The boundaries of each unit are clearly defined in the plan.

v) The approximate floor area of each unit is clearly shown in the plan.

vi) The plan is accompanied by the statement containing such particulars as are necessary to identify the title to the parcel.

vii) The plan is signed by the proprietor with an address on which documents relevant to the corporation can be served in accordance with section 54 of the Act.

3.5 How is the Application Presented
As noted above, every plan once put together as above, the developer is mandated under section 10C(h) to ensure that the plan is accompanied by the certificates referred to under section 11 of the Act, these are:

a) A certificate of a registered surveyor confirming that the structure shown on the plan or any envisaged projections are on appropriate appurtenance of the parcel including all easements indicated thereon, otherwise that it fits well.

b) A certificate of the local authority (as you may know under section 3 of the Physical Planning Act No. 16/2010, the whole of Uganda was declared a planning area) showing that the proposed structure or division of the structure has been approved by the local authority (read physical planning Board) in accordance with the law regulating building construction.

c) Notably, it needs to be emphasized that where the proposal is in respect of the Condominium plan that is to be brought under the operation of the Act, the plan shall, before it is registered, be accompanied by a certificate of an Architect registered under the Architects....

d) **Forms:** Regulation 6 prescribes forms I part 2 of the second schedule as the form of the application.

### 3.6 Common property and Governance of the condominium and easements properties in Uganda:

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34 The physical planning Act 2010, section 3 thereof declared the entire country a planning area and the act applies to the entire country in all aspects (section 11(3)(a) and (b) of the Constitution confirming the architectural and integrity of the proposed plan or indicating that the intended units indicated on the plan correlate with the existing structure.
a) **Section 2** of the Act defines *common property* as that part of the Condominium property that does not belong to any specific unit which is used in common by the owners of the unit and which includes without prejudice to the general effect of foregoing the land on which the property is situated, support structures and services, and **under section 6**, it doesn’t belong to any specific unit but held in equal proportion to all the unit owners who are bound to pay for its maintenance.

b) According to the learned Authors Mark, Frank, and Grant\(^{35}\) argue that a proprietor of a Condominium property is in a 3 Fold Legal relationship first as *an individual owner of a unit*, second *a joint co-owner of the common property* of the scheme, and thirdly *as an automatic member of the Association to whom the Management and Administration* of the scheme are entrusted with the duty to equitably use, enjoy and ensure that common parts of the building and the facilities are maintained adequately and regularly.

c) To sum it up the learned Authors of the tyranny of settlement laws, will commenting on the role of the planning authorities, urge that a planning Board local authority shall on inspecting the building or proposed structure site in which a permit is sought may deny/refuse to issue a certificate if the building or structure does not conform to the law and or only issue the plan to the buildings or structures that conform to the existing Law.

> “Ideally the system should provide for sharing of many amenities in the form of common Elements which the unit owners might not be able to afford

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individuals in exchange for sharing of common expenses: in reality, however, the microcosms of condominium governance mirrors the operations of large scale democracies: there are often power struggles and the Governmental representatives are often changed when they lose touch with their constituents or exceed their authority and or abuse their taxing and spending powers (read property rates and rental Income tax returns within the Ugandan Laws)\(^\text{36}\)

d) Common elements generally include\(^\text{37}\) walkways, driveways, lawns and gardens, lobbies, elevators, parking areas, recreational facilities, storage areas, laundry rooms, stray ways, plumbing, electrical systems, and, the portion of walls, ceiling, and floors and he argues that some parts of the common areas like sewer lines may be designated for the exclusive use of one or more of the individual unit owners in which case these may be termed as limited common elements. He cites the following examples: -

a) Parking space  
c) Balconies

b) Roof gardens/roof tops  
d) storage lockers/backyards.

e) Usually, at titling, the common areas shall be included in the unit factor and the unit area at titling stage as we shall discuss herein below, thus M. Robert Goldstein\(^\text{38}\) argues that when valuing for the sale of the

\(^{36}\) See the Income Tax Act and the Local Government (property rates) Regulations

\(^{37}\) See Raphael Muwonge (2017) understanding Condominium property regulations in Uganda: A valuer’s perspective:

Condominium property, the valuer must take into account beyond the interior of the unit being valued, the common property comprised in the registered Condominium plan affecting the unit in question to ensure that shares in common with the proportional unit factors are considered when dealing with the respective units.

4 Management of Condominium property

4.1 Under section 20, it establishes upon registration of a Condominium Plan, in respect of an existing building or structure or a corporation which shall interalia include; -

a) Operate as a Condominium plan No _____.
b) Consist of persons who own units in the parcel to which the plan relates;
c) Has a perpetual succession and a common seal and can sue in its corporate name.

4.2 The major functions of the corporations under section 21 Inter-alia include but are not limited to:- enforcement of its bye-laws, keeping the common property in a state of good repair, establish and maintain a fund for the administrative expenses determined by the corporation for purposes of maintaining the common property, payment of insurance premium, rent property rates, and or discharge of any further obligation: under section 21C(6) the board shall also hear complaints from aggrieved members of the corporations.

4.3 The Corporation under section 21 (d) is further charged with further ensuring levies of contributions on the portions of unit entitlement, undertake necessary external improvements on the property, comply with directives of local authorities or planning board in respect of any building or improvements on it, submit new plans in case of any alterations or to the Condominium plan.
4.4 As regards to the external general appearance of the buildings and the common areas, the corporation is enjoined under section 20(3) to keep the property in a good state of serviceable repair and properly maintain the immovable properties of the corporation and shall comply with the directives of the local authorities on proposed repairs like KCCA directive on paving and painting.

4.5 Under section 30, the corporation is empowered to make rules to provide for the management of the units and the property of the corporation which rules may be amended or revoked by a special resolution; the law envisages all those unit owners and their defendants or licensees entertained on the Condominium property enter as guests or for any reason of whichever description, are to be bound by the rules of the corporation.

5.0 Management Agent and Easements.

5.1 All Condominium corporations are under section 50(1) required on application by the corporation or owner of a unit to appoint a managing agent. This Agent is under section 21 (5) a representative of the board who attends to the day-to-day management of issues that may arise within the condominium property; these may include simple fixes like plumbing works.

5.2 As regards Easements part iii of the Act, sections 15 to 19 are very elaborate on what amounts to easements in Condominium properties as already highlighted hereinabove. These range from rights incidental

39 Condominium properties Act, 2001

41 Under section 21 (4). A corporation may by a special resolution, acquire or dispose of an interest in immovable property.

42 Supra No. 25
to owners of the common property under section 15(1) (a)-(d) which among other things include support, shelter, protection, passage or provision of water, sewerage, drainage, Gas-electricity, garbage, and air, they also include allowing passages that enable ICT and communication like telephone, radio and television services because of the use of digital migration systems that we adopted by Uganda in 2013 like decoder cables and ICT wires which every unit owner must ensure that his other co-owners are afforded reasonable support to use and enjoy43

5.3 **Section 16** sets out easements in favor of a unit owner which are deemed by law to accrue to the unit owner on registration of the Condominium plan, and these are structured to include an easement of the subjacent and literal support of the unit by the common property by every each other unit capable of affording support, easement of passage44 or provision of water, artificially heated or cooled air and other services by either means of any pipes, wires, cables or ducts for the time being existing in the parcel to the extent which these pipes, wires, cables on ducts are capable of being used in connection with the enjoyment of the unit45, Ms. Nakirija further urges that before buying condominium consider one should consider if its location is favorable for his or her daily routines, for example, she contends that one should know how long will take you to reach your workplace, church, and school if you have children. When you buy a condo, there will be particular places around your complex that might be important.

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43 Under section 15(3), its provided that the rights of easements created under this section, shall carry on with them all the other ancillary rights necessary to make them effective as if they were easements.

44 See section 16(b) & (c) of the Act.

45 See S. Nakirija, Things to consider before opting for a condominium, Monitor Newspaper of Wednesday, March 2020
6.0 **Condominium Properties and Occupiers liability:**

6.1 The Act limits the occupier's liabilities\(^{46}\) of a unit owner as against; the unsuspecting entrants unto the Condominium property, section 19\(^{47}\) provides that the owner of a unit shall only be liable in respect of an interest entered unto on the Condominium plan in proportion to the unit factor of his or her unit.

6.2 Uganda has no specific law and or statute on occupier’s liability. Most times we rely on common law\(^{48}\) therefore this means that the common law principle of "**slip and Fall incidents**" are applicable in respect of private unit owners but also as against the condominium corporation where the corporation fails to maintain the main common areas and other condominium corporation properties in a reasonably safe condition, it is liable for damages or injuries that a person incurs on-premises.

6.4 Raring of petty animals like Dogs and cats may be permissible within the condominium corporation rules though many have placed restrictions on dog ownership, many occupants like pets, as such, many breeders of these animals in high-end condominiums have posted breaches that border on nuisance issues such as barking and sniffing. Court\(^{49}\) recently pronounced itself on Dog liability in condominium estates in the case of

\(^{46}\) See Supra No. 37

\(^{47}\) Occupier’s liability is a field of Fort law, where an occupier of property either through ownership or lease has a duty of care to protect his entrants on the premises, liability usually arises from accidents caused by the defective or dangerous condition of the premises.

\(^{48}\) Section of the Judicature Act Cap 16 and section 10(10) of the Magistrates Courts Act allows the application of common Law in Uganda.

\(^{49}\) 2014 ONSC 11.82 (can L11)
Elbaum-vs-York Condominium corporation 50 No. 67, the Ontario Supreme Court of Justice 2014 heard that Albaum, a unit owner was walking on a common element when another unit owner’s dog which was unattended to attacked her causing her to sustain injuries, the condominium corporation by-laws had posted signed that dogs were to be leashed at the owner’s “risk” the plaintiff alleged that the Condominium Corporation and unit owners had failed to create and or adequately enforce rules that would require that dogs are kept on a leash and that unit owners control their pets at all times when on common elements thus endangering by-passers.

Court held as follows:

“Court found both the unit owner and the condominium corporation liable under occupier’s liability; the victim’s action was maintainable against both the dog owner and the condominium corporation.”

6.5 The lesson from the above case is that condominiums should ensure that they put in place and implement rules concerning pet animals; dogs and other dangerous animals that regulate the safe handling of dogs on the common elements by the unit owners otherwise the corporation will most likely not escape liability.

6.6 As regards pools and recreation facilities in condominiums, these at times can fun until an accident occurs, the other troubleshooting area is the influence of drugs 51, alcohol, and the now new normal ways of

51 Case in point was conversed in Mackay vs Metropolitan Toronto Condominium Corporation No. 985 unit owners fell victim to an intense smell of cigar smoke in their unit and prompted a nuisance claim alleging that the condominium corporation had bleached its duty to maintain the common elements and to repair common elements after smoke contamination, court agreed that smoke originating from the steps and air leaks in the units

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living in the face of a global pandemic\textsuperscript{52}, as shall be discussed, because of the attractive nature of these recreational facilities if not well guarded with attendants and posters to warn users adequately of the risks with clearly marked signage and properly maintained facilities\textsuperscript{53}.

6.7 On the 19th March 2021 in \textbf{RE: Halton Condominium Corporation No. 77 vs Vily Mitrovic}\textsuperscript{54}, Facts were that Two condo owners were refusing to wear a face mask while on the interior common elements of their condominium corporation contrary to the Red zone restrictions implemented by the corporation to fight Covid 19, security footage showed these unit owners walking, using and enjoying the common areas without wearing face masks, or in some cases wearing it around their neck or below their noses, on their part, these two unit owners claimed that they were exempt from wearing masks on account of a medical condition but refused to provide evidence of the same.

\textbf{Gibson J.}

held as follows: -

“whereas court takes judicial notice that the current global pandemic has resulted into a significant number of deaths, every occupant of the Red zone Halton’s corporation unless medically exempted was bound to wear a mask within the Condo building and that the mask policy and that the corporation must insist on all residents to mask up in order not to put the other residents in undue risk.”

\textsuperscript{52} Under Article 237(3) of the Constitution, 1995 and section 5(3) of the Land Act Cap 227, names 4 forms of tenure and of the 4, 3 are registered and titled under the registration of titles Act by way of Freehold title, leasehold title and Mailo titles.

\textsuperscript{54} (2021) ONSC-2071
6.7 Fire and safety, whereas the Act is silent on Fire and Safety, however using the mischief rule of statutory interpretation in respect of sections 15 to 19 of the Act, and using the “sui generies rule” one can comfortably assert that whoever causes fire among the Unit Holders is responsible for the fire safety in the unit.

6.8 In a related case in the City of Toronto vs York Condominium Corporation No. 6, the facts are that a fire started in a condominium unit that did not have a smoke alarm. Both the unit owner and the Condominium Corporation were charged for failure to have a smoke alarm/detector under the fire code Act. It can therefore be asserted that an owner of a particular unit who puts the lives of other occupants or their authorized guests may not escape claims under occupiers’ liability.

7.0 Effect of Registration of the condominium plan on the existing title

7.1 As highlighted hereinabove, under sections 3(2), 10(1), and Rule 6 of upon approval and presentation of a condominium plan and being presented in quadruplicate clearly indicating the number of units into which the building is divided and with a clear indication of the waterproof ink on tracing linen or polyester film or such other materials that are of a size and nature approved by the commissioner Land Registration is expected to examine these documents to his/her satisfaction, the plan must be accommodated by the other certificates as discussed hereinabove.

7.2 Upon being satisfied with the presented application, under section 5(1) the Registrar shall in line with section 5(1) close the part of the Register relating to the parcel described in the plan and upon a separate part for each of the unit described in the

55 Condominium Property Regulations no. 29 of 2002.
plan and shall upon the payment of the prescribed fee issue a certificate of the title in respect of each unit.

7.3 Certificate of title issued under this Act, though not a form of Tenure reserved under the constitution\(^{56}\) shall under section 5(2) be deemed to have been issued under the RTA\(^{57}\) and it’s for all purposes and intents conclusive evidence of ownership, indefeasible and only void for fraud under Section 77 and illegality under section 97 of the Land Act\(^{58}\), the condominium title takes the form I of schedule II as preferred in the third schedule.

7.4 A proprietor of a condominium title shall under section 5(3) be at liberty to transfer, lease, charge, or otherwise deal with the unit in the same way as land held under the RTA; and he can also create 3\(^{rd}\) party interests under section 6(1) and (2) which upon lodgment for registration shall be entered as encumbrances on the unit’s certificate of title and also endorsed as a separate part of the certificate of title in so far as and or to the extent of the unit factor.

7.5 Subdivision of the unit, under section 8(1) it’s possible for a unit owner with the approval of the local authority to subdivide the unit or consolidate his/her unit by registering with a registrar of titles a Condominium plan relating to the unit intended to be subdivided or consolidated, and in the application, he is required under section 8(2) to clearly, highlight the intended major necessary modifications to a subdivision and or consolidated units and upon acceptance of the registration of the

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\(^{56}\) Land Act Cap 227 as amended by Act No.1 of 2004, see CK Patel Vs Commissioner Land Registration. SCCA No-of 20
modifications, the original condominium unit shall be canceled and replaced with the newly issued plan.

7.6 The Law allows change of use of the unit under section 9(1) - (3), however, this is subject to the unanimous approval to consenting to a change by the corporation. The change in use must be endorsed by the planning authorities before the registrar entertaining it on the Register and where the change in use results in modifications to the Condominium plan, the user shall move the Registrar to register a modified condominium plan of the condominium plan that had originally been registered under section 5.4.

7.7 Notably also is Section 25(2) and 49(1-5) do provide for termination of condominiums59 either upon effluxion of the lease period in case of condos seated on leases or upon the developer wishes as such and having all the units vested in him, this is achieved by presenting a notice of termination under the prescribed form as set out under regulation 24, which is form number 1 in the 5th schedule to the regulations.

8 Limitations and Recommendations to increase the acceptability of condominium estates in Uganda

8.1 As Noted hereinabove, condos advantages such as minimal maintenance costs and resale value, among others, have made them popular to Ugandans. But before joining the condominium bandwagon Ugandan have been very slow and most of them have not yet embraced these kinds of a building partly because of the following reasons that must be addressed by the government, Ministry of land, real estate developer, and the financial market players if we really see

59 Under Regulation 14 of the Condominium regulations, on termination of the condominium status of the property and subsequent transfer of the property, the Registrar shall enter on the relevant register of condominium plans a notification of the cancellation of the plan and also indicate on any relevant register that the condominium plan has been cancelled.
condos as the answer to the ever-growing problem of lack of decent accommodation among the city dwellers. To get these cities right from the outset before settlement happens, planning has to happen ahead of development.

8.2 There is a need to increases awareness of this law into the masses and the laymen that it purports to seek to provide decent housing, Ugandans need to change their attitudes. Fatter urged that most Ugandans want to settle, stay and live on huge chunks of land no matter how unproductive they are on such land, he asserts that such people have no fantasies for small places like condominium properties where they feel that their privacy is often compromised who urges that the problem is not the enabling law but rather the social beliefs and attachment on physical land by many Ugandans are archaic in a way that they if they aren’t renting, they prefer to buy in low-end places creating slums and constructing unplanned and unapproved houses, this is so partly because one would rather occupy a Kibanja than a condominium property which is perceived as a leasehold whose occupancy is time-bound.

8.3 Poverty and the high Cost of affordability coupled with the cost of construction in absence of long-term financing options and unregulated interest rates on home loans and mortgages remain a big challenge in the development of condominium estates in Uganda. Most of the available financing options are short-term mortgage financing payable within less than 3 years, market serves as of 2021 indicate that on

60 See on line conversation with a one Fattah Patel, a Post Gradate legal student in one of the institutions of Higher learning in Uganda.

61 Similar views where shared by a one Kyazze Fahad- a lawyer in Private Practice in Kampala, in an on line interview on 7TH July 2021.

62 According to a 2016 survey done by Bank of Uganda (BoU), residential mortgages were priced at an average of 22.02 per cent while commercial mortgages attracted 21.81 per cent at an annual interest.
average condominiums costs between 150 Million to 450 Million, and that a person deposits Shs5m (flexible amount). He /she can pay a 30 percent cash down payment within the three months and the balance over 18 months, this makes condominium properties Steeply priced\textsuperscript{63}, this financial affordability segregation again makes Condominiums not to work for the average Ugandans because most of the developers are targeting rich Ugandans who can afford them which makes the idea of owning a condo very unlikely, and if it is a mortgage, it will have to be paid in 10 years meaning whoever takes it out must be able to service it with at least Sh2m monthly putting condominiums beyond the reach of an average Ugandan. Yet other countries like Ethiopia\textsuperscript{64} and China have provided long-term financing options to the purchaser of condominium units with close to 80 years of mortgage financing at a controlled interest rate that is not at the commercial rate.

8.4 High Tenant Ratio\textsuperscript{65} Uganda being a cosmopolitan country with lots of tribes and most people preferring to settle along tribal and cultural lines find condominiums because of the high unchecked background occupancy not safe for settlement and raising their children, most occupants would want to check out the owner-to-tenant ratio. Because many condominiums are often purchased as investments, there could attract a high percentage of tenants in the building. Although this trend is also changing, especially in condominiums which are located in urban areas where they provide convenient shopping, access to transportation, and other amenities thereby attracting owners who

\textsuperscript{63} \textbf{Will condominiums transform housing in Kampala, Monitor newspapers, Tuesday November, 2013. Available on \url{www.monitor.co.ug/} editors.}

\textsuperscript{64} \textbf{The case of Ethiopia,} in Addis Ababa, the Ethiopian government has rolled out three condominium housing projects where salary earners who are willing, get cheap houses and pay them off their salaries as a form of a loan, these projects are some of the ways through which the Ethiopian government hopes to solve its city’s housing problem. In Uganda, the National Social Security Fund has promised to roll out the same arrangement for its members.

\textsuperscript{65} \url{https://www.streetdirectory.com/travel_guide/73318/real_estate/the_5_disadvantages_of_condominium_ownership.html} last accessed on 7th July 2012
intend to live in their condos and such are shunned by cultural conservatives. The restrictive nature of covenants, codes of conduct, and guidelines set out in the bylaws of the governing corporation also tend to scare away many people who want to buy properties and enjoy their peace of mind.

Conclusively, therefore, it’s argued that given the increasing population index and the scrabble for land as a factor of production, Ugandans and our authorities in a bid to provide decent housing to a cross number of our population should invest in the construction of residential estates to be financed through long-term financing by way of mortgages to those that can afford by way of debt financing portfolio. However, Government and Ministry of Lands should put up a joint sectoral task force to close the vacuum on negotiating landing rates, because unless addressed, lots of monies that would be positively affecting economic progress in the economy is in the short run invested in the real estate sector whose turn around period takes long as a means of providing decent housing to the skyrocketing population in the emerging cities in the countryside.

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**Bibliography**


2 Safier, AH: (1964) Recommendations for Urban Development in Kampala and Mengo Report No. TAO/Uganda/01


4 Gilbert (1963) Condominium homeownership for monopolies, cities; Michigan Law Review