



The Implications of Parallel Civil and Criminal Proceedings on Land Ownership Rights in Uganda

Muyunga Ashiraf*, Valentine Tebi Mbeli, Kisubi Esther

School of Law, Kampala International University, Uganda

DOI: <https://doi.org/10.47772/IJRISS.2026.100601296>

Received: 30 June 2026; Accepted: 04 July 2026; Published: 17 July 2026

ABSTRACT

The conduct of parallel civil and criminal proceedings in Uganda is legally permissible, arising from the distinct nature and remedies offered by each process. While this dual pursuit can serve as a legitimate means of safeguarding land ownership rights, it has increasingly been prone to abuse. Parties sometimes institute criminal proceedings alongside ongoing civil suits over land, often with the intent of intimidating adversaries, delaying justice, or coercing the surrender of lawful land interests. Such practices can undermine the constitutional right to own and enjoy property and impose significant procedural and financial burdens on the parties and the courts. This paper, adopting a doctrinal research approach, examines the conduct of parallel proceedings, the legal framework permitting them, the challenges they create, including evidential intersections, abuse of process, and impacts on fair trial rights, and their implications for land ownership in Uganda. The study urges judicial vigilance, legislative reforms, and improved land management mechanisms to curtail the abuse of parallel proceedings and ensure the timely protection of lawful land rights

Keywords: Parallel proceedings, Abuse of court process, Right to ownership of land, Uganda.

INTRODUCTION

Land is an immutable resource that is crucial to the political, economic, social, and cultural spheres of life of people in agrarian societies such as Uganda (Quan, 2004). It is from the utilization of land that people derive a livelihood, attain food security, income, employment and other historical and spiritual significance to its inhabitants (Quan, 2004). According to the recent Uganda Bureau of Statistics report, 62.3% of the 10,698,913 households nationally are engaged in agriculture, 61% in crop production, 37% in livestock farming, while 53% are engaged in subsistence farming (UBOS 2024). Therefore, depriving such a huge part of the population of land would not only amount to denying them a livelihood but also other benefits which can be derived from it (Nangula, 2016). This, in essence, has made land an invaluable asset and an area of a do-or-die contestation.

The Constitution of the Republic of Uganda vests the ownership of land in its citizens (Constitution of the Republic of Uganda, 1995 as amended, Art. 237 (1) & (3)). This in addition to the situation of the right to own property, which includes land in the broad spectrum of the Bill of Rights provided for within the Constitution (Art. 26). Uganda has further enacted legislation criminalising acts that interfere with or undermine a landowner's right to the exclusive possession and enjoyment of land. These include offences such as criminal trespass, malicious damage to property, removal of boundary marks, forgery, and uttering false documents (Penal Code Act, Cap. 128, Sections 77, 257, 259, 282, 312, 315, 324, & 328) Provisions have further been made by way of civil proceedings to enable any aggrieved party to claim and recover either land or its possession majorly through established courts of law (Nakayi, 2023, p.180). This in essence translates that in a bid to preserve land ownership rights, nothing that can deter an individual from pursuing parallel civil and criminal remedies while they arise from the same subject matter.

Indeed, this is acceptable as both proceedings have clear-cut distinctions and ultimately offer distinctive remedies that a litigant would be in need of pursuit. Predominantly, criminal proceedings in Uganda are public in nature and brought in the name of the state (Ssekaana, 2010, p.2). Their main objective is to punish, deter, and rehabilitate the convicted wrongdoer. This is not the case with civil proceedings, which are private in nature and



seek to award fair compensation for the injury inflicted on an aggrieved person (Ahmad, 2022). Consequently, with these well laid down distinctions in character, purpose, and remedies, a party would be at liberty to pursue what suits him or her without any doctrinal inconsistency or confusion.

It is noteworthy that in a bid to withstand the bottleneck competition and assert their claim over a given piece of land, parties have embraced the approach of instituting parallel civil and criminal proceedings. However, this process is not free from abuse as proceedings are brought not only with the intention of preservation of the legitimate rights over land but also to suppress and ultimately defeat any other bonafide claims that can be antagonistic to their interest. This practice has become so tense to the extent that parties stage trumped-up charges to have an ill advantage over their opponents (Nakayi, 2023, p.182). This stems from the fact that litigation over land in the Ugandan courts is protractive averaging 2years, the institution of several criminal proceedings against the adversary would put the pursuer at an advantage over the other disputant, given the underlying consequences (Langa, 2025, p.3). Apparently, they can lead to remand to prison of the adversary, which will provide an opportunity to take over possession of the suit land, or in the alternative, use it as a bargaining tool to cause their adversaries to surrender their lawful claims over land.

Given the high levels of land disputes in Uganda and the daunting task faced by the courts in resolving the same, this paper, by taking a doctrinal research approach where the existing literature on the subject, internet sources, relevant laws, and case law are analysed, examines the impact of the conduct of parallel civil and criminal proceedings on land ownership rights guaranteed under the constitution. This paper argues that although the pursuit of parallel proceedings is legally entrenched within our laws, it is not immune from abuse, which can in one way or the other impact on the people's right to own land. This paper is divided into four sections: introduction, general remarks on parallel civil and criminal proceedings in Uganda, the intersection between parallel proceedings and the right to own land in Uganda, and lastly, the conclusion.

METHODOLOGY

This study adopts a doctrinal research methodology where a systematic examination of the legal and regulatory framework governing the conduct of parallel proceedings and its implications on land ownership rights in Uganda is analysed. The study draws upon primary legal sources, including the Constitution of Uganda, relevant statutes, and case law. Secondary sources, including books, journal articles, and reports, are also analysed relevant to the subject. The collected materials are analysed through qualitative content analysis with the objective of identifying the impact of the conduct of parallel proceedings on land ownership in Uganda.

The doctrinal inquiry in this study extends to examining the relevant constitutional and statutory framework together with the jurisprudence by the superior courts of record, that is, the High Court, Court of Appeal, Supreme Court, and other decisions from other common law jurisdictions directly addressing the regulation of parallel proceedings on land ownership rights within Uganda's context. Further, the relevant literature on the subject, including textbooks, journal articles, and policy documents, is also analysed as required for interpreting and evaluating the applicable legal principles.

RESULTS

General Remarks on Parallel Civil and Criminal Proceedings in Uganda

This section of the study defines parallel proceedings, the law governing the conduct of parallel proceedings in Uganda, difficulties arising from the conduct of parallel proceedings over land in Uganda, stay of parallel proceedings in Uganda, and the bar against the use of evidence admitted in parallel proceedings.

Definition of Parallel Proceedings

Parallel proceedings as a concept can be more intricate than one would imagine due to its complexity. In this regard, one would ask whether parallelism should be taken to mean identical claims and identical parties? What about where there are different parties but claim their interest from the parties who once held the same interest? How similar should the parties be and their interest to constitute parallel proceedings? For this study, parallel

proceedings refer to a situation where parties or those who claim under them institute both civil and criminal proceedings arising from the same subject matter before courts of law. It does not matter which of the two proceedings, either civil or criminal, was instituted earlier than the other, provided that at one point in time, there are both civil and criminal proceedings instituted by parties or those who are claiming under them before courts of law.

The Law on the Conduct of Parallel Civil and Criminal Proceedings in Uganda

The first modern distinction of civil and criminal proceedings under English law emerged following the conquest of England by Duke William of Normandy in 1066 (Baclay, 1990). Before that, there was nothing called criminal law within the English law, but rather the law of wrongs or torts (Bathurst, 2017, p.3). It was under this regulatory framework that victims of crimes would be compensated instead of being punished, and death or mutilation were reserved for the worst offenses. However, following the Norman conquest of England, modern structures of criminal law as they are currently known began to emerge. These include: the creation of police, prosecution of the offenses in the name of the crown, trial by jury, and the establishment of the office of the prosecutor, among others (Bathurst, 2017, p.11). These reforms marked the doctrinal separation of criminal and civil proceedings that prevails today.

It is not a secret that Uganda was once a British Protectorate that, by virtue of the founding legal instruments with Britain, became a common law country (Oloka Onyango, 2015). Of much importance is the 1902 Order in Council, which empowered the Commissioner to make Ordinances for the proper administration of justice, raising of revenues, and generally for peace, order, and good governance of all persons in Uganda (Parliament of Uganda n.d.). The Order in Council further provided for the application of the existing laws in England and in some countries, such as India, to constitute part of the Ugandan laws (Order in Council, 1902, Art. 15(2)). This is how some of the present statutes, such as the Evidence Act, Penal Code Act, Magistrates Court Act, and Trial on Indictment Act, became part of the Ugandan law. The best expression of this position was laid by Sir Kenneth O'Connor in *Kiriri Cotton Ltd v R.K Dewani* when he held:

Section 15(2) of the Uganda Order in Council provides inter alia that the jurisdiction of the High Court should be exercised in conformity with the substance of the common law and doctrines of equity in force in England on August 11, 1902. As I have already said, I think that established decisions of the superior courts of England, which declared the substance of the common law or doctrines of equity which were declared before that date, are binding on the courts of Uganda and on this court. (*Kiriri Cotton Ltd v R.K Dewani* (1958) E.A, p. 239)

The conduct of parallel civil and criminal proceedings within the Ugandan courts does not exist in a vacuum, but ultimately depends on being permitted by the laws of Uganda to prevail. The Judicature Act provides for the laws which are applicable by the High Court in exercising its unlimited original jurisdiction (Judicature Act Cap. 16, section 14(2)). They are: the Constitution, written or statutory law, common law, and doctrines of equity, custom or usage, and the principles of justice, equity, and conscience where no express law or rule applies to the matter. Although this provision refers to the laws that apply to the High Court, it reflects the general hierarchy and sources of law applied across all courts of judicature in Uganda.

Through judicial precedent, the High Court in the case of *Joseph Agenda v Uganda* confirmed the distinction between civil and criminal proceedings. Justice Lameck N. Mukasa, who presided over the matter, held: -

There is a clear distinction between civil and criminal actions. The civil proceedings determine civil litigant's civil claims or liabilities the standard of proof is on balance of probabilities. There is a public interest in the criminal proceedings and the required standard of proof is beyond reasonable doubt. The civil proceedings are individualistic in nature while the criminal proceedings are public in nature. (*Joseph Agenda v Uganda* (HC Criminal Misc Application No. 003/2011))

Owing to the fact that both civil and criminal proceedings are distinct in nature, it can therefore be rightly inferred that there is nothing that can bar the institution of both criminal and civil proceedings, notwithstanding that the two might be emanating from similar facts/subject matter. This position has received the nodding of both the Supreme Court and several decisions of the Court of Appeal. In the case of *Sarah Kulata Basangwa v Uganda*,

the Supreme Court held that ‘We are in agreement with the Court of Appeal that criminal proceedings may emanate from the same facts but it does not deter prosecutors to institute criminal proceedings because the facts are similar to that of a civil case’ (SCCA No.31/2018, p.10). Similarly, the Court of Appeal in the case of *Uganda v Kamoga Muhammadi* had the same view. Egonda JA, who gave the lead judgment, held:

Criminal and civil cases serve different purposes and can proceed concurrently. Criminal proceedings emanating from the same facts as civil proceedings, cannot be stayed because of the latter unless there are serious grounds that may affect a party's right to a fair hearing as provided for in the constitution...If a party commits a crime in pursuit of its civil rights, he or she can still be prosecuted. (*Uganda v Muhammad Kamoga* (Criminal Appeal No. 646/2023 p.15-17))

The above position was only confirming the earlier decision delivered by the same court in *Sarah Ssozi & Anor v Uganda* in which it was held *inter alia*; ‘We find that the learned appellate judge properly re-evaluated the evidence on record and properly found that it is possible to have both criminal and civil proceedings’. (*Sarah Ssozi & Anor v Uganda* (Criminal Appeal No. 247/2014, p.7)). In sum, the settled position of Ugandan law is that nothing bars the institution of both civil and criminal proceedings, even where they arise from the same subject matter. The rationale for this rule is that civil and criminal proceedings are distinct in nature and, accordingly, offer different and complementary remedies to the parties.

Difficulties Arising from the Conduct of Parallel Proceedings over Land in Uganda

The institution of parallel proceedings is not free from difficulties or challenges posed against the litigants but also to the courts of law. The first challenge, which is systemic in nature, is that parallel proceedings increase the cost of litigation to the parties involved since the cost would ultimately be borne twice. When it comes to civil proceedings which are private in nature, the cost of litigation would entirely be borne by the parties, save for the costs incurred by the state in running the administration of justice system apparatus. Whereas on the criminal proceedings side, the prosecutorial costs would be borne by the state in addition to further costs where the accused person is held on remand or where he/she is charged with semi-capital or capital offenses (Constitution, 1995, Art. 28(3)(c)). This does not, however, rule out the cost that would inherently be incurred by the parties during the pendency of the criminal litigation. Therefore, parallel proceedings lead to the diversion of the scarce resources (time, money, and labour) by investing in the resolution of disputes, most especially where the proceedings arise from a land dispute (Obaikol Esther & Joseph Ogwapit, 2017, p.4).

Secondly, parallel proceedings with the associated costs have made courts inaccessible for the poor generally, arising from their inability to sustain the trials, which are in every sense protracted. Courts in Uganda have been singled out as the least effective when it comes to the resolution of disputes related to land (Obaikol Esther & Joseph Ogwapit, 2017, p.4). They only preside over 10% of the total number of disputes as compared to other forms of dispute resolution mechanisms, which handle 90% of the disputes (HiiL, 2024, p.6). This also explains the 7% of the people in Uganda who are believed to have encountered legal challenges and took no form of legal action (HiiL, 2024, p.6). The inability to afford the costs of the formal justice mechanisms, coupled with the long periods required to resolve the disputes at hand, together with the disbelief that they would receive a positive outcome at the end, has made such kind of people stay away from the formal court systems (HiiL, 2020, p.5). This, in the long run, inhibits the people's right to access a just, fair, and speedy trial process guaranteed under the Constitution (Constitution, 1995, Art. 28(1)).

Thirdly, parallel proceedings are a great cause of inconvenience from at least one party's point of view. This forms part of the motive as to why one of the parties would initiate parallel proceedings to an already ongoing suit. These proceedings would therefore be initiated with the intention of putting the other counterpart into an inferior position and creating a great form of inconvenience. Remember, during the pendency of the proceedings, either one of the parties or both might have been barred from utilization of the land arising from court injunctive reliefs.

Lastly, parallel proceedings present a great form of evidential intersections between the two proceedings, thereby running a risk of causing misdirection to the courts of law. There are instances where parallel proceedings present some of form of evidential overlap in circumstances where a proper determination of either of them can be

arrived at by first determining the other. The best illustration of this is where there is a pending suit seeking for the declaration of trespass and recovery of land, yet at the same time there are parallel criminal proceedings where one of the parties is charged with either criminal trespass or malicious damage to property. In such circumstances, the evidential overlap can complicate adjudication and increase the risk of inconsistent findings. It is worth looking at it in detail.

Criminal and Civil Trespass: Evidential Intersections in Parallel Proceedings

The offense of criminal trespass is codified under section 282 of the Penal Code Act (Penal Code Act, Cap. 128). This provision is primarily designed to protect a person's lawful possession of property against intruders or trespassers (*Sekandi John v Uganda* (Criminal Appeal No. 40/2023), p.9). It is particularly relevant in the context of parallel proceedings, where a single act may give rise to both civil claims for trespass to land and criminal liability for criminal trespass. The provision provides-

Any person who—

(a) enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person; or

(b) having lawfully entered into or upon such property remains there with intent thereby to intimidate, insult or annoy any person or with intent to commit any offence, commits the misdemeanor termed criminal trespass and is liable to imprisonment for one year.

The ingredients of the offense of criminal trespass as they can be deduced from the above provision are; (a) intentional entry onto the property in the possession of another (b) the entry must be unlawful or without authorization (c) the entry was for an unlawful purpose and (d) participation of the accused person (*Sebagula Aron v Uganda* (Criminal Appeal No. 13/2023), p.9).

It is therefore apparent that the offense of criminal trespass is not concerned with the issue of ownership/title of the land or property in question but with possession of the same. The only difference is that in criminal trespass, possession of the property in question must be actual. In the words of Mubiru J in *Uganda v Kinyera & 3 Ors* he notes; 'Possession within the meaning of this section refers to effective, physical or manual control, or occupation, evidenced by some outward act, sometimes called de facto possession or detention as distinct from a legal right to possession' (*Uganda v Kinyera & 3 Others* (Criminal Sessions Case No. 0374/2018) p.9).

This is different from trespass to land where the slightest amount of possession, though not actual, suffices (*Justine E.M.N Lutaya v Stirling Civil Engineering Co. Ltd.*, (Supreme Court Civil Appeal No. 11/2002), p.7). It should further be noted that though criminal trespass seeks to protect possession of land, the possession must be lawful. It does not protect a trespasser in possession as against a party lawfully entitled to possession (*Sepuya Vicent & Anor v Uganda*, (Criminal Appeal No. 128/2017), p.7). To put it in simple words, possession must coincide with ownership of property, as the lawful owner of the property in question cannot be condemned for criminally trespassing on his own property. This situation can become particularly complex under the Mailo land tenure system, where ownership of the land is legally separate from ownership of developments or improvements on it, creating potential conflicts between possession and ownership (Nakayi, 2023, p.192).

It follows, therefore, that understanding who is the rightful owner of the property in question is key in determining whose possession the court should protect. However, questions as to the determination of the rightful party in possession or ownership fall into the realm of civil proceedings and can best be handled by the civil court and not by way of a criminal action (*Kizito Andrew alias Mbwabwa v Uganda*, (Criminal Appeal No. 022/2021), p.4). Therefore, in circumstances where the suit for determination of ownership is still pending and yet there exists a parallel criminal case of criminal trespass, there is a risk for the criminal court to issue a contradictory judgment to that of a civil court that stands to finally determine the issue of ownership. It further poses a risk of condemning the lawful owner of the land in question as a trespasser, thereby undermining their constitutional and statutory rights to ownership and possession of the land.

It is from such circumstances that courts in Tanzania have maintained that a charge of criminal trespass is only maintainable after determining the issue of ownership. The recent decision of Kilimi J in *Peterson Kabulule Lema vs. Republic* (Criminal Appeal No. 56/2022), wherein the learned judge cited with approval the case of *Sylivery Nkangaa v Raphael Albertho* confirmed this position. It was held that:

The charge of criminal trespass is not maintainable as the ownership of the land in dispute has not been resolved by a court of law in a civil suit. A criminal Court is not the proper forum for determining the rights of those claiming ownership of land. Only a civil court via a civil suit can determine matters of land ownership (*Sylivery Nkangaa v Raphael Albertho* (1992), TLR, p. 110).

Moreover, even in circumstances where the proceedings can be stayed to await the determination of the issue of ownership, courts in Uganda would stay civil proceedings in favour of criminal proceedings, which are believed to take precedence by virtue of public interest (*Uganda v Salongo Lule Kamoga*, (Criminal Revision No. 01/2025, p.4). The only limitation is where the denial of a stay of the criminal proceedings would violate the parties' right to a fair hearing. Egonda-Ntende JA made this finding in *Muhammadi Kamoga v Uganda*, in which he held:

Another point of contention was on the stay of proceeding in the criminal matters because of civil suits filed. Criminal cases focus on offenses against the state and public order, while civil cases address disputes between individuals or entities seeking to enforce private interests. Criminal matters are generally considered to be of public interest. This is because crimes are viewed as offenses against society as a whole, not just against individual victims. It is difficult to discern how litigation involving private interests can take precedence over public interest litigation...Criminal proceedings emanating from the same facts as civil proceedings, cannot be stayed because of the latter unless there are serious grounds that may affect a party's right to a fair hearing as provided for in the constitution (*Muhammad Kamoga v Uganda*, (Criminal Appeal No. 646/2023), p.16).

Intricacies arising from the Defense of a Bona Fide Claim of Right in Parallel Property Disputes

It should be noted that crimes against property fall into three categories: taking it, damaging it, destroying it, and invading it (Samaha, 2014, p.232). It is always a complete defense for the accused person in such offenses where they raise a defense of bonafide claim of right. This introduces additional intricacies, as the validity of the defense often depends on matters concurrently under consideration in civil proceedings, particularly the determination of ownership. Section 7 of the Penal Code Act provides:

A person is not criminally responsible in respect of an offence relating to property if the act done or omitted to be done by the person with respect to the property was done in the exercise of an honest claim of right and without intention to defraud. (Penal Code Act, Cap, 128).

Therefore, the defense of claim of right is not only available in situations in which the accused person believes to have owned the property but also includes those situations in which the accused person honestly, although not necessarily correctly, believed that he/she had either a right in the said property to either receive, use, take, acquire, or dispose of the same (*Andine Ali Tembo v The People* (High Court of Zambia HJA 12/2011)). Where this defense is raised, it successfully vitiates all the criminal intentions (*Uganda v Sepuya Vicent & Anor*, p.8). Ostensibly, it is the duty of the prosecution to disprove this defense whenever it arises from the evidence of the defense (*Uganda v Ajiozi & Ors*, (Criminal Case No. 218/2019)). The reasoning behind the existence of this defense is simple to find. A person should not be criminally held responsible for the offenses against property in circumstances where he or she honestly believed to have had a legal right to it (Johnson, 2022). Therefore, where there are parallel proceedings and the defense of a claim of right is raised in respect of the offenses against property, the criminal proceedings would hardly be successful unless the claim is fraudulent and non-existent.

Parallel Proceedings and the Privilege Against Self-Incrimination

Parallel proceedings can, in certain circumstances, prejudice an accused person's right to remain silent and breach the evidential privilege against self-incrimination. The Constitution of the Republic of Uganda bestows upon the accused person or his or her spouse a right not to be compelled to give self-incriminating evidence

(Constitution, 1995, Art, 28(11)). Further, the Evidence Act also provides that the husband and the wife of the accused person are competent but not compellable witnesses for the state without the consent of the accused person (Evidence Act, Cap. 8, Section 120 (1)(a)).

Although the right to remain silent and the privilege against self-incrimination are sometimes used interchangeably to refer to the same thing, broadly speaking the two are quite different (Keane & Paul, 2012, p.595). The privilege against self-incrimination deals with questions of direct compulsion of an accused person to provide answers against him/herself, whereas the right to remain silent covers certain situations of indirect compulsion (Dennis, 2013, p.150). The classic formulation of the rule against self-incrimination was set Godard LJ in *Blunt v Park Lane Hotel* where he held:

The rule is that no-one is bound to answer any question if the answer thereto would, in the opinion of the judge, have a tendency to expose [him] to any criminal charge, penalty or forfeiture which the judge regards as reasonably likely to be preferred or sued for (*Blunt v Park Lane Hotel* (1942) KB, 253 at p.257).

It follows that whereas the accused person has a right to remain silent during the pendency of criminal proceedings, this privilege does not exist when it comes to civil proceedings (Kenae and Paul, 2012, p.595). It is for this reason that under the Evidence Act, parties to the suit, their wives and husbands are all considered to be competent and compellable witnesses (Evidence Act, Cap. 8, Section 120). Therefore, the accused person who is the defendant in a parallel civil suit would be required to file his written statement of defense on matters for which the criminal proceedings arose (Civil Procedure Rules, S.I, 71-1, Order 8 rule 1). In case of any failure, it would entitle the plaintiff to either a default or *ex parte* judgement, whichever the case may be (Civil Procedure Rules, Order 9 rules 5,6,8,10 and 11(2)). This would, in the long run, prejudice the accused person's right to remain silent and the privilege against self-incrimination.

Stay of Parallel Proceedings in Uganda

The challenges encountered during the conduct of parallel proceedings can be resolved by way of a stay of either civil or criminal proceedings. These challenges are majorly those that can, in one way or another, impede the parties' right to a fair hearing if either proceeding is not stayed. To begin with, there is no specific provision under the law in Uganda that governs the stay of either civil or criminal cases in favour of each other (*Uweera Agnes v Uganda*, (Criminal Revision No. 031/2022), p.3). The only guidance that is available is provided under section 209 of the Magistrates Courts Act. The provision reads:

No magistrate's court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed. (Magistrates Courts Act Cap.19, Section 209).

In *Uganda v Ssonko Edward Mutonyi J* laid down the constituent elements of the above provision to be;

(1) That there are two concurrent suits or proceeding one of which is previous or filed earlier than the other before the same court or any other court vested with jurisdiction to hear the suit or proceeding (2) The suit or proceeding is between the same parties or parties under whom they claim or litigate and (3) The subject matter of the suit or proceedings are directly or substantially the same (*Uganda v Ssonko*, (Criminal Misc Application No. 12/2019), p.6).

It is therefore apparent and as observed further by Mutonyi J in *Uganda v Ssonko Edward* (Criminal Misc Application No. 12/2019), p.6) that section 209 of the Magistrates Courts Act is applicable to both civil and criminal proceedings. Consequently, the court should only be made to understand which of the two suits was filled earlier than the other in order to stay the latter proceedings. This approach has as well been followed in the subsequent decisions in *Ssali Vicent v Uganda* (Criminal Misc Application No. 035/2022); *Kafeero Paul & 2 Ors v Uganda* (Criminal Revision Cause No. 003/2022) and *Alinda Peter & 2 Ors v Uganda* (Civil Appeal No. 12/2021) where criminal proceedings had been filled earlier and the courts refused to grant an order of stay in



favour of civil proceedings. The other reasoning followed by the court in the above decisions is that under common law, criminal proceedings take precedents over civil proceedings and there is no way the former proceedings could be stayed in favour of the latter. Additionally, that nothing could impede the determination of both suits concurrently and that the Director of Public Prosecution cannot be deterred from instituting criminal proceedings for the sole reason of the existence of the pending civil suit arising from the same facts.

However, there are instances where courts have stayed criminal proceedings in favour of civil proceedings. This has been majorly on grounds that concurrent proceedings could best be handled by determining the issue of ownership of the land in question first by the civil court. A case in point is *Ssebulime Baker v Uganda* in which Senoga J held:

There is no universal principle that proceedings in a criminal case must necessarily be stayed when a similar or identical matter is pending before a civil court. However, in the present case, the criminal proceedings arise out of complaints for offences allegedly committed during the pendency of the civil suit, involving the same facts and allegations. The issue of ownership of the disputed land is pending decision before the Land Division and the Court of Appeal. The dispute involved in the criminal proceedings is purely of a civil nature, and if allowed to continue while the civil matters are pending, it will create complications instead of facilitating the matter. (*Ssebulime Baker v Uganda*, (Criminal Appeal No. 21/2018), p.7)

Similarly, in *Kakande Aloysious v Uganda Tadeo J* held:

I wish to state that in case where an investigation can satisfactorily be investigated by both the civil and criminal court, there is absolutely no reason to stay criminal proceedings. The reverse is only true in cases that involve the determination of ownership rights (*Kakande Aloysious v Uganda*, (Criminal Miscellaneous Application No. 03/2022), p.5).

Besides the elements set out by the Court, in *Uganda v Edward Ssonko* for the stay of parallel proceedings, *Gadenya J Uweera Agnes v Uganda* (Criminal Revision No. 031/2022) following the decision in *Debenho Pte Ltd and Another v Envy Global Pte Ltd and Another* ((2022) SGH7) and *Jefferson Ltd vs Bhetcha* ((1979) WLR, p.898) added one more element in determining whether or not to stay criminal proceedings. That is, the existence of a real danger of the applicant being prejudiced if concurrent proceedings are allowed to continue.

It should be noted however, that the decisions which were relied on by *Gadenya J* in *Uweera Agnes v Uganda* that is *Debenho Pte Ltd and Another v Envy Global Pte Ltd and Another* and *Jefferson Ltd vs Bhetcha*, the courts in those respective cases were asked to stay civil proceedings in favour of criminal proceedings. The underlying requirement set by the courts in those decisions for the stay of civil proceedings was whether the defendant would suffer a real danger of injustice or prejudice that is not notional as a result of concurrent proceedings. Despite the fact that these authorities dealt with the stay of civil proceedings, *Gadenya J* held that the same principle applies with equal force when courts are considering whether to stay criminal proceedings.

The reasoning in the above case rhymes exactly with that of *Egonda JA* in *Uganda v Kamoga Muhammad* where the court held that criminal proceedings can only be stayed in favour of civil proceedings where the refusal to stay would prejudice the party's right to a fair hearing as guaranteed under the Constitution. It should be added that the party who seeks to stay proceedings will be required to prove by way of evidence how the continuous conduct of parallel proceedings would infringe on his or her right to a fair hearing. Sweeping statements would not be enough to secure the order of stay (*Uganda v Salongo Lule Kamoga*, (Criminal Revision No. 01/2025, p.4).

In all, stay of proceedings is a welcome tool when it comes to addressing the challenges which are likely to be encountered during the conduct of parallel proceedings, most especially when they are likely to infringe on party's right to a fair hearing. The court will therefore be required to weigh the competing interests of the parties' right to have their respective cases be heard in a just and speedy manner over the other. This would be a matter of exercise of judicial discretion on whether to grant or not (*Metroploitan Bank v Pooley*, (1884-5) LR 10 App Cas p. 210 at 220-221).

Evidential Bars in Parallel Proceedings

Parallel proceedings may prejudice the accused person's right to remain silent and benefit from the privilege against self-incrimination arising from evidential disclosures in the pending civil proceedings. Courts have in some jurisdictions opted instead of staying civil proceedings to safeguard against prejudices that might arise as a result of evidential disclosures, by barring the use of any evidence adduced by the defendant in his criminal trials. The Supreme Court of Zambia in *Shoprite Holdings Ltd & Anor v Lewis Chesanga Mosho & Anor* (Appeal No. 86/2013) cited with approval the decision in the case of *Attorney General for Zambia v Meer Care & Desai and 19 Others* for which it was held-

There is a short way to deal with this as I indicated in argument. It is to ring fence the English proceedings [civil proceedings]. Thus the proceedings take place in private and an order is made that none of the evidence adduced by the defendants can be used against them in criminal proceedings nor any of the documents disclosed by them in these proceedings be used in the criminal proceedings, unless they agree or the Court otherwise orders. The result would, therefore, be that there could be no possible abuse of the criminal proceedings and the defendants' right to silence and the way in which they conducted their criminal defences. (*Attorney General for Zambia v Meer Care & Desai and 19 Others* (2006) EWCA Civ 390).

The Supreme Court of Zambia therefore went ahead to hold that:

We are, however, of the view that a sensible approach to take in this matter is to adopt the reasoning in **Attorney General for Zambia v Meer Care & Desai and 19 others**, and ring fence the civil proceedings. We therefore order that none of the evidence adduced by the defendants in the civil proceedings can be used against the 1st defendant in criminal proceedings, nor can any of the documents disclosed by him in the proceedings in the court below be used in the criminal proceedings, unless the 1st defendant agrees or the court orders otherwise. The order staying the proceedings is set aside and the appeal is allowed (*Shoprite Holdings Limited & Anor v Lewis Chesanga Mosho & Anor* Appeal No.86/2013, 33-34).

DISCUSSION

Intersection Between Parallel Proceedings and the Right to Own Land in Uganda

There is an increase in land disputes in Uganda, which continue to threaten the people's right to own land (Ssenkumba & Muyimba, 2024, p.107). The ever-increasing population, the need for land for agriculture, and large-scale industrialisation has led to increased pressure on land as a result of land scarcity (Margaret, 2008). These challenges have made access to justice pathways that resolve peoples' justice needs quickly and justly the most pressing need for the preservation of people's right to own land. Sadly, these effective and efficient judicial mechanisms are still lacking in Uganda. For instance, though statistics have indicated that 26% of the Ugandans faced land-related justice challenges in the period of 2018-2020 during the time of the study, 51% of the said disputes had not been resolved or were still waiting for a resolution (HiiL, 2020, p.5). The commonest land problems are disputes over boundaries, ownership, and use of the land and land grabbing (HiiL, 2020, p.5).

Ugandan courts are characterised by a huge case backlog leading to endless/protractive land litigations (Judiciary of Uganda, 2023). This has had huge ramifications, not only making the cost of land litigation more expensive for the poor to maintain, but also exposing the entire judicial system to abuse, quite often by the rich, thereby threatening the people's right to own land and property in Uganda. A clear manifestation of system abuse is oftenly revealed by the institution of parallel proceedings before the courts of law. It is noteworthy that parties having come to the realisation of the often-protracted litigation over land that eludes them of its benefits, they have resorted to using the court system to gain quick access to land by way of criminalisation of land matters. This is by way of deliberately turning genuine civil claims over land into criminal matters. The earlier study made by Nakayi (2023) has labelled these attempts as Weaponizations of civil and criminal trespass to land to undermine the property rights of weaker parties.

This study finds that these attempts are more than what Nakayi (2023) prescribes to encompass the use of all crimes against property as prescribed within our laws. It follows that, as a civil matter meant to resolve a land



dispute would still be pending trial, parties resort to the use of criminal proceedings to suppress genuine interest over land to their advantage. This study does not suggest that genuine crimes cannot be committed by the parties during the pendency of the civil proceedings, but rather seeks to point out the rampant practice of the abuse of the judicial system stemming from the criminalisation of land matters. The ever-increasing number of applications for stay of criminal proceedings analysed within this study (over 10 in number), pending the determination of claims for land ownership before the High Court, can be an eye-opener to this reality. Moreover, this excludes those cases that are handled by the lower courts that handle the highest number of cases (Judiciary of Uganda, 2023), and those that have not been reported even at the High Court level. The category of cases reported within this study represents that section of a few Ugandans who can afford to assert their claims before the High Court, most especially the rich.

Despite the above statistics, nothing much has been done by the courts to stamp out this practice due to the outright prescription of the law. Apparently, section 209 of the Magistrates Courts Act only allows the stay of parallel proceedings where the suit sought to be stayed was filed subsequent to the one in which the party seeks its trial to be expedited. Therefore, in circumstances where a frivolous criminal case was instituted earlier than the civil case, courts have innocently dismissed such applications for stay and ordered that the trial be conducted concurrently. The bar is therefore so high for the parties to surmount. Moreover, even where parties have argued before courts that the criminal proceedings were instituted maliciously to suppress their genuine land interests, courts have insisted that this can be cured by either lodging a complaint before the Director of Public Prosecution (DPP), proceeding with the criminal trial and raising their defense, and lastly by institution of civil proceedings in form of malicious prosecution at the end of the trial. The best illustration of this point was made by Egonda-Ntende JA in his lead judgment in *Uganda v Kamoga Muhammadi*. The learned Justice of Appeal held on this point-

DPP has the authority to initiate, conduct, and discontinue criminal prosecutions without interference. Where a party is aggrieved by the DPP's decision there are legal remedies provided. A party may inform the DPP about the unfairness of its decision of prosecution, who if satisfied may apply for a withdrawal or determinate the prosecution or *nolle prosequi*. In the event of prosecution, a party may challenge it or provide a defense during a trial. In the event of conviction, a party may still appeal. An aggrieved party still has an option to file a suit under the tort of malicious prosecution. There are other mechanisms to ensure that while the DPP has significant powers there are not absolute. However, to stay

criminal proceedings while civil proceedings are continuing is not one of the mechanisms envisaged unless there are exceptional circumstances. (*Uganda v Kamoga Muhammadi*, Criminal Appeal No. 646, 16)

With utmost respect to the holding of the court, all the remedies suggested by the court can be quite elusive for the poor, illiterates and marginalised people who often appear before courts unrepresented with an advocate. Secondly, for the court to suggest that the accused person can appear before the court to challenge his or her trial by raising his or her defense and thereafter institute a civil case of malicious prosecution at the conclusion of the trial, these would only work belatedly after the accused person has been remanded and ultimately dispossessed of his or her land. The remedies proposed by the court cannot, therefore, timely serve the accused person's interest of safeguarding his or her rightful claim over land. The timeliest intervention rests with the court, which ought to act at the first instance.

It follows therefore that the loopholes within the law, have been exploited by land grabbers to takeover and deny people's genuine rights over land using the same system that is meant to protect them. The outright preference for criminalisation of land matters is derived from the fact that it bears a less prosecutorial burden on the complainant since it is borne by the state (Nakayi, 2023). Secondly, the complainant may be aware of his or her weak civil case and choose to torment his adversary by institution of criminal proceedings to secure his arrest and ultimately give up his genuine land rights (Nakayi, 2023). Courts should therefore trade carefully to differentiate malafide claims over land from bonafide ones as they are at all times bestowed with the duty to protect the abuse of its processes (Judicature Act, Cap, 16, section 17). Abuse of court process in this regard entails the prevention of the judicial system from being used in a manner that is inconsistent with its cardinal values, principles, vision and purposes (Lawrence, 2015). It does not raise any shadow of doubt that



criminalisation of land matters and use of the civil proceedings other than their intended purposes of facilitating the attainment of justice, amounts to an abuse of court process, which the courts must at all times desist.

When it comes to civil proceedings, abuse of court process has manifested in the delaying tactics employed by advocates, litigants, and sometimes administratively by the courts in disposing of land matters (Opio, 2018). Fair hearing demands that the determination of disputes, either criminal or civil, should be done in a speedy and fair manner by all courts and any other established judicial tribunals (Constitution, 1995, Art 28(1)). This right is indeed non-derogable and forms one of the core principles of adjudication that justice shall not be delayed (Constitution, 1995, Art 44, 126(2)(b)). In specific terms, section 17 (2) of the Judicature Act provides:

(2) With regard to its own procedures and those of the magistrates' courts, the High Court shall exercise its inherent powers-

- a. to prevent abuse of process of the court by curtailing delays in trials and delivery of judgment, including the power to limit and discontinue delayed prosecutions;
- b. to make orders for expeditious trials.

Therefore, in curtailing the abuse of court processes where there are inexcusable delays, courts are empowered to discontinue and dismiss the proceedings (D.A Lubega Byayi & Another v Bakambira Olive Kigongo & Another (Misc Application No. 0263/2007). While dismissing the application for revision in a matter that had persistently been prosecuted for 7 years without conclusion, Mubiru J in the case of Altaff Hussein & 2 Ors v Eguma Blasio t/a Zebra Hotel (Misc Application No. 048/2017) cited with approval the decision in *Grovit v. Doctor* where Lord Woolf held as follows-

The courts exist to enable parties to have their disputes resolved. To commence and to continue litigation which you have no intention to bring to conclusion can amount to an abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so requires (which will frequently be the case) the courts will dismiss the action. The evidence which was relied upon to establish the abuse of process may be the plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in *Birkett v. James* [1978] A.C. 297. In this case once the conclusion was reached that the reason for the delay was one which involved abusing the process of the court in maintaining proceedings when there was no intention of carrying the case to trial the court was entitled to dismiss the proceedings. (*Grovit v. Doctor* [1997] WLR 640 at p. 647-648.)

Further still, it is part of the judicial code of conduct and ethics as a solution to curb unnecessary delays that the judicial officer is required to render his or her decision within 60 days from the date of the conclusion of the parties' hearings and submissions, unless for good reason it is not possible to do so. Rule 6.2 of the Uganda Judicial Code of Conduct (2003) provides: -

A Judicial Officer shall promptly dispose of the business of the court, but in so doing, must ensure that justice prevails. Protracted trial of a case must be avoided wherever possible. Where a judgement is reserved, it should be delivered within 60 days, unless for good reason, it is not possible to do so.

At common law, where there is abuse of court process within criminal proceedings, the court is entitled to terminate the proceedings pre-emptively either permanently or temporarily (Corns, 1997, 75). This position is also carried under section 209 of the Magistrates Courts Act for which the courts have followed. The best example was demonstrated by the High Court in the case of *Musumba Yahaya and Another v. Uganda* in which the court held:

I find that the determination of ownership rights of the suit land which are best resolved through a civil suit will have a direct bearing on the criminal suit. For if Musumba is found to own an interest in the suit land, then this sale to Nakakawa would be valid, and the criminal proceedings then rendered moot. The reverse could also support the prosecution's case. Allowing the criminal proceedings to continue when there is a pending civil suit



in the High Court to determine ownership rights will amount to an abuse of court process and can result into conflicting judgments. (Musumba Yahaya and Another v. Uganda, Criminal Revision No. 04/2019)

This same reasoning was carried in other decisions including Nalwoga Anna Lilian v Uganda (Criminal Revision Case No. 01/2021), and Ssebulime Baker v Uganda (Criminal Appeal No. 21/2018).

Despite all the tremendous efforts undertaken by the courts, the practice of abuse of the parallel proceedings is still ongoing. Parties who have genuine land interests are in prisons, either on remand or serving sentences. These acts definitely tantamount to a violation of the people's right to own and use their land as provided for within the conclusion.

CONCLUSION

The practice of conducting parallel proceedings is part of the Ugandan law, which has been embraced by the parties, most especially those who are embroiled in land disputes. Partly, it has been used innocently by the parties to attain any remedy available to preserve and protect their land interest. In this regard, parties pursue parallel proceedings as a way of forum shopping. Others, who are the majority, conduct parallel proceedings to deny their adversaries their lawful interest over land. This has manifested in the criminalisation of land matters and the deliberate prolonging of the civil proceedings.

What then is the way forward?

It is the duty of the court as the arbiter to preserve and protect people's right to own land during its processes. The courts should therefore be steadfast to stamp out any conduct that threatens to abuse its processes. In doing so, the court should be on high alert not to stifle genuine claims but rather sieve those in its opinion that are intended not only to abuse its processes but also to violate the party's rights to fair trial and ownership of property.

There is also a need to reform the national land management system to ease the dispute resolution mechanisms. Tenures such as mailo land system, which allows ownership of land without possession thereof, contradict the principle of ownership with possession for which actions such as trespass, criminal trespass, and malicious damage to property were anchored. This makes the resolution of disputes in such a system very difficult and complicated for the courts.

There is also a need to amend the law and deny the institution of crimes such as criminal trespass where there is a land dispute without first resolving the issue of ownership. This approach has been adopted in Tanzania, and it will obviously reduce the criminalisation of land matters.

The Police, with the Director of Public Prosecution, must always be on the lookout to prevent the abuse of the criminal processes. It is at this point that they should refer the majority of the cases that have underlying land disputes to civil courts for the determination of ownership, other than aiding in the criminalisation of civil disputes.

The Judiciary could develop clear guidelines on the management of parallel civil and criminal proceedings arising from land disputes. This would help judges and magistrates determine when to stay proceedings, how to handle evidential intersections, and how to protect the rights of parties, particularly the marginalized and unrepresented.

REFERENCES

1. Ahmad, J. (2022). Disparities between civil law and criminal law: A cohort study. Global Science Research Journal, 10(2). <https://www.globalscienceresearchjournals.org/articles/civil-law-and-criminal-law-differences.pdf>



2. Barclay, G. (1990). Criminal justice systems in Europe: England and Wales. Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations. <https://www.ojp.gov/pdffiles1/Digitization/133730NCJRS.pdf>
3. Bathurst, T. F. (2017, October 18). A short history of criminal law. Francis Forbes Society Australian Legal History Tutorials. <https://www5.austlii.edu.au/au/journals/NSWBarAssocNews/2021/23.pdf>
4. Dennis, I. H. (2013). The law of evidence (5th ed.). Sweet & Maxwell.
5. Esther, O., & Ogwapit, J. (2017). Dispute resolution: The Land Governance Assessment Framework technical report. Landnet Uganda. <https://mubsep.mubs.ac.ug/mod/resource/view.php?id=48949>
6. HiiL. (2020). Deep delve into land justice in Uganda. https://www.hiil.org/wp-content/uploads/2020/10/HiiL-Uganda-Deep-Dive-Land_Online-1.pdf
7. HiiL. (2024). Justice needs and satisfaction in Uganda: Legal problems in daily life. <https://www.hiil.org/wp-content/uploads/2018/07/HiiL-Uganda-JNS-2024-digital.pdf>
8. Jackson, J. (2022, October 6). The defense of claim of right. Hugo Law Group. <https://hugolawgroup.com.au/insights/the-defence-of-claim-of-right-%EF%BF%BC/>
9. Judiciary of Uganda. (2023). Judiciary annual performance report: Financial year 2022/2023. https://judiciary.go.ug/files/downloads/Judiciary_Annual_Performance_Report_202223_Web_231115_140706.pdf
10. Keane, A., & McKeown, P. (2012). The modern law of evidence (9th ed.). Oxford University Press.
11. Langa Siu, S. (Ed.). (2025). A glimpse into the Judiciary annual performance report 2023/2024. The Judiciary Insider, (22), 3. <https://judiciary.go.ug/files/publications/INSIDER%20ISSUE%2023%20-%20Jan%202025web.pdf>
12. Nakayi, R. (2023). Weaponisation of trespass to land and its implication for land justice and enjoyment of property rights in neoliberal Uganda. Strathmore Law Journal, 7(1). <https://journal.strathmore.edu/index.php/law/article/view/184>
13. Obaikol, E., & Ogwapit, J. (2017). Dispute resolution: The Land Governance Assessment Framework technical report. Landnet Uganda. <https://mubsep.mubs.ac.ug/mod/resource/view.php?id=48949>
14. Oloka-Onyango, J. (2015, November 25). An overview of the legal system in Uganda. Presentation at the China–Africa Legal Forum. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3617283
15. Opio, R. (2018, January 25). Impact of land adjudication delays on crime, economic and social development. Paper presented at the 20th Annual Judges' Conference. <https://judiciary.go.ug/files/downloads/The%20Impact%20of%20Land%20Adjudication%20delays%20on%20Crime,%20Economic%20and%20Social%20Development%20by%20Opio%20Robert.pdf>
16. Parliament of the Republic of Uganda. (n.d.). History of Parliament. <https://www.parliament.go.ug/page/history-parliament>
17. Quan, J., et al. (Eds.). (2004). Land in Africa: Market asset or secure livelihood? Proceedings and summary of conclusions from the Land in Africa Conference held in London, November 8–9, 2004. <https://www.asfg.org.uk/pdfs/12516IIED.pdf>
18. Rugadya, M. A., et al. (2008). Northern Uganda land study: Analysis of the post-conflict land policy and land administration: A survey of the IDP return and resettlement issues and lessons: Acholi and Lango regions. https://mokoro.co.uk/wp-content/uploads/northern_uganda_land_study_acholi_and_lango.pdf
19. Samaha, J. (2014). Criminal law (11th ed.). Wadsworth Cengage Learning.
20. Shejvali, N. (Ed.). (2016). Land, food security and agriculture in Uganda. Friedrich-Ebert-Stiftung. <https://library.fes.de/pdf-files/bueros/uganda/13549.pdf>
21. Ssekaana, M. (2010). Criminal procedure and practice in Uganda (2nd ed.). LawAfrica Publishing.
22. Ssenkumba, M., & Muyimba, Y. (2024). Land related disputes in Uganda and pathways to addressing them from citizens' perspectives. Islamic University Journal of Social Sciences, 3(3), 107. <https://www.journals.iuiu.ac.ug/index.php/iujss/article/view/634/470>
23. Uganda Bureau of Statistics. (2024). National population and housing census 2024: Final report (Vol. 1). <https://www.ubos.org/wp-content/uploads/2024/12/National-Population-and-Housing-Census-2024-Final-Report-Volume-1-Main.pdf>