THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CA-0106-2016

Consolidated with

HCT-05-CV-CA-0014-2017

(Both arising from MBR-00-CV-CS-0078-2012)

KATWIRE ANTHONY :: APPELLANT

VERSUS

MBOGO VINCENT :: RESPONDENT

AND

MBOGO MATAYO :: APPELLANT

VERSUS

KATWIRE ANTHONY :: RESPONDENT

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

JUDGMENT

Introduction.

[1] These two appeals are against the orders and decree of the learned Magistrate Grade one sitting at Chief Magistrate's Court of Mbarara at Mbarara delivered on **16th/11/2016**.

[2] The background of the appeals is that the Appellant in **HCT-05-CV-CA-0106-2016** was sued by the Respondent in the Chief Magistrate's Court of Mbarara at Mbarara for a declaration that the Respondent was the lawful owner of property comprised on a plot of land at Nshungyezi Trading Centre at mile 8, also described as No. 11. The Respondent sought for orders of eviction against the Appellant, general damages for

trespass, a permanent injunction restraining the Appellant from further trespass and costs of the suit.

The Appellant contended that the Respondent had no reasonable cause of action against him. That he and the Appellant had contributed money and jointly purchased the suit property. That their dispute only arose when he disagreed with the Appellant on the use of the commercial building that they both contributed to and constructed on the suit land.

The suit was heard and finally determined by the trial Magistrate in favour of the Respondent declaring him the lawful owner of the suit land. The Appellant was declared to have a life estate in the suit land limited to 1/3 of the building on the suit land. The reversionary interest in the suit land was declared to lay with the Respondent. No order was made as to costs of the suit.

The Appellant being dissatisfied with the orders and declarations of the trial court lodged **HCT-05-CV-CA-0106-2016** on the following grounds:

1. **The learned trial Magistrate erred in law and fact to shift the burden of proof on the Appellant/Defendant by holding in her judgment. "The Defendant has not proved on the balance of probabilities an interest greater than some form of agreement to use 1/3 of the building" and this caused substantial miscarriage of justice.**
2. **The learned trial Magistrate erred in law and fact when she ignored the massive evidence on record and held that the Appellant/Defendant has no proprietary interest in the suit land (plot) and this led to a substantial miscarriage of justice.**

3. **The order made by the trial Magistrate that the Appellant/Defendant's share of 1/3 of the shop building is only life interest for the appellant, is illegal and unattainable and should be set aside.**
4. **The learned trial Magistrate was wrong in failing to award costs of the suit to the Appellant/Defendant after disallowing the Plaintiff's claim against the Defendant for trespass.**

The Appellant prayed that this court allows the appeal with costs in this court and in the court below, declare that the appellant and respondent jointly own the land and the building thereon in equal shares. Set aside the order of the trial court giving the Appellant/defendant a life interest in the 1/3 of the building.

Representation.

[3] The Appellant was represented by *M/s Katembeko and Co. Advocates* while the Respondent was represented by *M/s Kwizera and Co. Advocates.*

Both counsel filed written submissions which I have taken into consideration in arriving at my decision.

The duty of this court.

[4] It is the duty of this court as a first appellate court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see **Father Nanensio Begumisa and three others vs Eric Tiberaga SCCA 17of 2000, [2004] KALR 236**). In a case of conflicting

evidence, the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions (see **Lovinsa Nankya vs Nsibambi [1980] HCB 81**).

In its appellate jurisdiction, this court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular, this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally. (**See Nyero vs Olweny and Ors (Civil Appeal 50 of 2018) and Kaggwa vs Apire (Civil Appeal 126 of 2019) per Mubiru J.**)

I shall be guided by the above legal principles.

[5] While writing this judgment, this court moved on *suo moto* under **Order 11 rule 1** of the Civil Procedure Rules and had **HCT-05-CV-CA-0106-2016** and **HCT-05-CV-CA-0014-2017** consolidated. **Order 11 rule 1** provides that:

> *"1. Consolidation of suits.*
>
> *Where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved, the court may, either upon the application of one of the parties or of its*

own motion, at its discretion, and upon such terms as may seem fit—

(a) order a consolidation of those suits; and

(b) direct that further proceedings in any of the suits be stayed until further order."

The underlying principle under **Order 11 rule 1 (supra)** is that consolidation should be made where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to ender it desirable that the whole of the matters should be disposed of at the same time. However, where there are deep differences between the claims and defences in each action, consolidation ought not to be ordered. (See **Stumberg and another vs Potgier [1970] E.A 323 at 326**).

The instant cases are both appeals. It is the duty of this court as a first appellate court as noted above, to subject the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion.

It is my humble view that while doing this, this court will be able answer all the common questions of fact and law raised in both appeals.

Analysis and decision of this court.

[6] Before going into the merits of this appeal, I have observations concerning the grounds of appeal that were formulated for determination by this court. The law that governs the drafting of

memoranda of appeal and grounds of appeal is **Order 43 rule 1(2)** of the Civil procedure Rules.

Order 43 rule 1(2) of the Civil Procedure Rules provides that the memorandum of appeal shall set forth, concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative.

The **Black's Law Dictionary, 8th Edition at page 1191** defines an argumentative pleading as a pleading that states allegations rather than facts and thus forces court to infer or hunt supporting facts.

In **M/S Tatu Naiga & Co Emprorium vs Verjee Brothers Ltd (Civil Appeal 8 of 2000)**, the Supreme Court held that:

> *"...counsel who frame memoranda of appeals and other legal documents which are ultimately presented to court should comply with the requirements of the rules and forms for framing memoranda and such other legal documents."*

In **Kitgum District Local Government & Anor vs Ayella (Civil Appeal 8 of 2015)** this court while relying on **M/s Tatu Naiga (supra)** observed that:

> *"Grounds ought to be; (a) as clear as possible, (b) as brief as possible, and (c) as persuasive as possible, without descending into narrative and argument. A ground of appeal must only state the objection to the decree without any argument or narrative. Although there is no maximum requirement as to the length or*

the fullness of detail of a ground of appeal, the argumentation which is necessary for the objection to the decree should be reserved for the written or oral submissions. To include justifications, elaboration or illustrations of the objection in the ground itself risks introducing argument or narrative into the ground." [Emphasis mine]

[7] Grounds 1, 3 and 4 of this appeal are offensive to **Order 43 rule 1(2)** of the Civil Procedure Rules, a provision that is couched in mandatory terms. I will reproduce the impugned grounds herein below to put this into context.

Ground 1 of this appeal states that:

"The learned trial Magistrate erred in law and fact to shift the burden of proof on the Appellant/Defendant by holding in her judgment. "The Defendant has not proved on the balance of probabilities an interest greater than some form of agreement to use 1/3 of the building" and this caused substantial miscarriage of justice."

Ground 3 states:

"The order made by the trial Magistrate that the Appellant/Defendant's share of 1/3 of the shop building is only life interest for the appellant, is illegal and unattainable and should be set aside."

Ground 4 states that:

"The learned trial Magistrate was wrong in failing to award costs of the suit to the Appellant/Defendant after disallowing the Plaintiff's claim against the Defendant for trespass."

The above grounds are argumentative and narrative in nature. For example, ground 1 the words *'the Defendant has not proved on the balance of probabilities an interest greater than some form of agreement to use 1/3 of the building'* form a narration of the learned trial Magistrate's judgment. Ground three is a repetition of ground 1 and also goes into argument when the appellant states the words *"...is illegal and unattainable and should be set aside".* Ground 4 is not precise in the fact that this court is not able to tell from it whether the 'wrong' the Appellant is complaining about was one of fact or law. It would set this court on a fishing expedition to try and ascertain what the trial Magistrate did wrong in awarding the said costs. **(On this, (See Katumba Byaruhanga vs Edward Kyewalabye Musoke, C.A. Civil Appeal No. 2 of 1998; (1999) KALR 62T, Attorney General vs Florence Baliraine, CA. Civil Appeal No. 79 of 2003 and Nyero vs Olweny and Ors (Civil Appeal 50 of 2018)).**

Grounds 1, 3 and 4 are therefore struck out for being offensive to **Order 43 rule 1(2).**

I will proceed and determine this appeal on the remaining ground. Ground 2 of the appeal states that:

The learned trial Magistrate erred in law and fact when she ignored the massive evidence on record and held that the Appellant/Defendant has no

proprietary interest in the suit land (plot) and this led to a substantial miscarriage of justice.

[8] Counsel for the Appellant submitted on this ground that the learned trial Magistrate ignored and misapplied the defence evidence and arrived at a wrong conclusion.

That from the evidence on record, the parties had a good relationship and their relationship was that of joint owners of the suit land. That whereas it was not disputed at trial that the Appellant's name doesn't appear on the land sale agreement between PW2 and Respondent, it was evident that the actions that preceded the signing of the agreement proved the intention of the parties.

While relying on the decision in **Crabb vs Arun District Council [1976]1 Ch 183**, counsel propounded the doctrine of proprietary estoppel as being applicable to the Appellant's claim. It was counsel's submission that that this doctrine would found a claim for a person who was unable to rely on the normal rules concerning the creation or transfer (and sometimes enforcement) of an interest in land.

In their reply, Counsel for the Respondent submitted that counsel for the Appellant argued a ground of appeal not set out in the memorandum of appeal which was contrary to **Order 43 rule 2** of the Civil Procedure Rules. Counsel invited court to strike out the ground.

[9] I will start with counsel for the Respondent's contention that Counsel for the Appellant introduced a new ground of appeal in their arguments. Having read the entire argument on this ground, it is my

finding that what counsel pointed out as a new ground of appeal was not an introduction of a new ground of appeal but an abridgement of the already existing ground.

[10] It is an undisputed fact from the court record and submissions of both counsel that the Appellant's name doesn't appear on the land sale between PW2 and the Respondent.

It is a general rule under our law of evidence that the best evidence of contents of a document is the document it self and no extrinsic evidence shall be called to add, vary or contradict the agreement or document where that has been put down into writing. (**See Sections 91 and 92 of the Evidence Act and DSS Motors Ltd vs Afri Tours and Travel Ltd HCCS No. 12 of 2013** per Bamwine J). This is the parole evidence rule.

In **Obwana vs Malaba Town Council & 2 Ors (Civil Appeal 139 of 2013)** this court while considering the parole evidence rule held that:

> *"...this rule is not cast in iron. It gives room to exceptions where the party to a contract can be allowed to adduce extrinsic evidence to court to clarify 'the intention of the parties' where the terms of the contract though written down are as provided under Section 92 of the Evidence Act if the statement is ambiguous, illegal (for lack of consideration, incapacity to contract); Collateral- contract partly oral and partly in writing, or to prove nature of the transaction." [Emphasis mine].*

The Supreme Court in **General Industries U. Ltd vs Non Performing Assets Recovery Trust CA.5/1988**, also exhaustively discussed this position as below;

> *"The time is long past since the courts have been precluded from giving effect to the intentions unless the words used cannot possibly bear that meaning.... Courts will interpret the words or construe them in a manner as to give effect to the intention of the parties.... and in applying those principles I hold that the intrinsic evidence was correctly relied on."*

From the above, it is the position of the law that extrinsic evidence to explain intention from the above authorities is not supposed to vary, add or contradict an already written agreement or contract but explain it.

In the instant case, the Respondent tendered into court an agreement that was executed at the time he purchased the suit land from PW2. No evidence was led challenging the contents of the agreement or that it was in any was ambiguous or unclear.

Counsel for the Appellant in his submission faults the learned trial Magistrate for not looking into the actions of the Appellant and Respondent after the execution of the agreement to determine their true intentions. This intention according to counsel for the Appellant is creation of a joint ownership of the suit property.

This is a clear addition to the contents of the agreement of purchase of the land which is neither un clear nor ambiguous in nature. It also has

the effect of writing a fresh contract of joint ownership between the Appellant and Respondent.

[11] I note that counsel for the Appellant raised a new point of law in the form of the doctrine of proprietary estoppel which was not argued before the lower court and neither pleaded by the Appellant. The new point was raised by counsel for the Appellant while submitting on the dealings of the parties. Learned counsel for the Appellant faulted the learned trial Magistrate for not applying the doctrine of proprietary estoppel to the facts before her.

The Supreme Court in **Makula International Ltd v His Eminence Cardinal Nsubuga & Anor (Civil Appeal 4 of 1981) [1982] UGSC 2** considered a similar scenario. At page 11 of its judgement, it was held that:

"Whether an appellant can, on appeal, raise a new point of law not argued before the lower court is a matter for the discretion of the appellate court."

There are settled rules set out in case law which govern the exercise of such discretion. These are:

1. The court should be satisfied that the evidence upon which it is being asked to decide establishes beyond doubt that the facts, if fully investigated, would support the new plea. (**See The United Marketing Company vs Hasham Kara [1963] 1 EA 276**).
2. Full justice can be done to the parties provided that the court is satisfied that the matter had been properly pleaded or that

all the facts bearing upon the new point had been elicited in the court below. (**See Christine Bitarabeho vs Edward Kakonge (SCCA no. 4 of 2000), Benon Burora vs Rubahamya Stephen CCA no. 121 of 2012, Tanganyika Farmers Association Ltd vs Unyamwezi Development Corporation Ltd. [1960] EA 620** and **The Tasmania [1890] 15 AC 225**).

The test which emerges from the above decisions is that the appellate court ought only to decide in favor of an appellant on a ground there put forward for the first time, if it is satisfied beyond doubt, first, that it had before it all the facts bearing upon the new contention as completely as would have been the case if controversy had arisen at the trial. And next, that no satisfactory explanation could have been offered, by those whose conduct is impugned if an opportunity for an explanation had been afforded them in the witness box. (**See Makula International Ltd vs His Eminence Cardinal Nsubuga & Anor (supra)**).

To decide the point of proprietary estoppel by this court, it will depend entirely on construction of the doctrine as applied to the evidence of both parties in the trial court to ascertain whether their conduct created a situation giving rise to the ingredients of proprietary estoppel. I believe this court is in a good position to form its own conclusion on the evidence of both parties as the trial Magistrate would have done had the point been raised before her. (**See Donaghey vs O'Brien and Co. [1966] 1 W.L.R 1171**).

[12] It is a settled principle of evidence that whoever desires any court to give judgment as to any legal right or liability dependent on the

existence of facts which he asserts, must prove those facts exists. (**See Section 101 of the Evidence Act**). It is said that this person has the burden of proof. This is the person whose suit or proceeding would fail if no evidence at all were given on either side. (**See Section 102 of the Evidence Act**).

The standard of proof in cases like the instant one is on a balance of probabilities. (**See Miller vs Minister of Pensions [1972] 2 All ER 372.**

Burden of proof has two distinct meanings; that generally the burden of proof, in the sense of producing evidence, passes from party to party as the case progresses, while the burden of proof in the sense of obligation to establish the truth of the claim by a preponderance of the evidence rests throughout upon the party asserting the affirmative of the issue.

In a civil trial like the instant one, one party's case need only be more probable than the other. Where the evidence is evenly balanced, victory ought to go to the Defendant as the burden of proof is with the Plaintiff who has initiated the legal proceedings.

[13] In the instant case, the Respondent's (the Plaintiff) evidence in chief and pleadings plus the Appellant's (the Defendant) response, the following facts needed to be proved by the Respondent; the initiator of the proceedings in order for him to get judgment in his favor:

1. That he purchased the suit land on his own without the help of the Appellant.

2. That he single-handedly, without the help of the Appellant, demolished the old house on the land.
3. That he single-handedly built the new house on the suit land without any help of the Appellant.

The Respondent at the trial, told court, at **page 5** of the record of proceedings that:

> *"I bought that land alcne not with the Defendant...I have a sole agreement dated 5/8/1995. I signed it. Here is the agreement. I signed as number one. The seller Nakatabwa also signed. I bought it at Shs. 1,315,00/=. I paid all that money. I have an agreement showing that I paid all."*

The sale agreement and its translation were tendered into court and properly exhibited as **D1(a) & D1(b).** This evidence was unchallenged by the Defence. The seller **PW2**, Ephraim Nyakatuura corroborated his evidence. The sale agreement according to the evidence on record was executed by two people; the Respondent and PW2.

[14] It is trite that in a sale of immovable property, upon payment of the full purchase price or part deposit thereof, property passes to the purchaser who acquires either equitable interest for the part deposit or becomes lawful purchaser for the full purchase price. (**See Semakula & Anor vs Setimba, CA No. 5 of 2013** and **Ismael Jaffer Allibhai & Ors vs Nandalr Harviian Karia Anor SCCA No. 53 of 1995**.

The Respondent's evidence at trial was that he had paid the whole purchase price for the suit land and the seller did not challenge this. Whereas the Appellant laid claim that he contributed to the purchase, no evidence was led to that effect. He also at page 23 of the record did not deny the fact that the Respondent appeared on the purchase agreement alone.

I agree with the learned trial Magistrate's conclusion at **page 7** of her judgment that the Plaintiff had established ownership of the land.
The first fact, that is; that the Respondent had purchased the suit land on his own without the help of the Appellant was therefore proved on a balance of probabilities.

[15] At **page 13** of the record of proceedings the Respondent stated in his evidence that:

> *"Defendant did not develop any part of that land. Defendant forcibly entered part of the building. He did this at night and I found him in the morning when he had already entered the house. It is me alone who constructed the building."*

He went on at **page 14** to tell court that:

> *"We were paid compensation because he claimed part of the land I developed. I didn't stop payment of the compensation to the defendant because I had already filed this case in court. I do not know that the Defendant contributed shs. 580,000/= towards*

building that land. I used about Shs. 20m to build the house. I do not have the record of the breakdown of this money. I used different people to demolish the old building. Bosco Babikingira demolished the building...the document/agreement between me and Babikingira for the work he did-I know it. It was on 13th/04/2010. The document is to the effect that me and the Defendant's name is in that document because by then my friendship with the defendant was still good."

At page 15, **PW1** stated further that:

"This new building was built by Bosco Babikingira. I made an agreement with him. I also included the Defendant in this agreement for the reason that he was my friend."

The above excerpts of the Respondent's evidence indicate that, firstly, the Appellant did not contribute anything to the purchase of the suit land or even to the demolition of the old house that was on the plot. Secondly that the Appellant did not contribute to the construction of the new building which was built by the Respondent at about 20 million for which he never had a break down of expenses.

Thirdly, that the Appellant existed on the demolition agreement with Bosco Babikingira (**DW 3**) and the building plan for the new building still with Bosco Babikingira purely because he was a 'good friend' of the Respondent.

No further evidence was led in corroboration of the fact that the Respondent bought the suit land single-handedly, demolished the existing old building single handedly, constructed a new building in its place single handedly and that the Appellant existed on the land sale agreement purely as a friend.

In the instant case, the Respondent had the initial burden of proving the facts he laid before court these were, that demolition of the old building on the suit land and construction of the new building on the suit land were both done single handedly.

[16] When the burden of proof shifted to the Appellant/Defendant, he told court at **pages 23, 24** of the record that:

> *"...The mud and wattle house was not there-in 2010 when I retired, after receiving my gratuity; I consulted the Plaintiff that we should demolish the old fashioned building we get a new one. He told me he had no money. I told him since I had received money. I would construct the building and he would pay me back later. The agreement is the one I tendered in court. Witnessed as Secretary Education because I was on the LC 1 committee. We both applied for a building plan in both our names...The copy of the building plan was given to the Plaintiff...I started building before he paid anything. I have receipts. I bought 78 iron sheets. There are receipts. I paid 1,716,000/=...I bought bricks...I bought shed pipes, building materials and other materials. Before we built, the mud and wattle was pulled down. Babikingira a mason*

pulled it down. Me and the Plaintiff contracted Babikingira to pull it down. Yes, we made an agreement."

The Appellant tendered into court a receipt number 22855 which was exhibited as **DExh 2** detailing the building materials the Appellant bought amounting to UGX 1,716,000/=. It was unchallenged by the Respondent.

[17] DW3, Babikingira Bosco, the mason who razed the old mud and wattle building on the suit land told court that he signed an agreement to that effect with the Appellant and the Respondent. **DExh 3** was exhibited in this regard. The document was unchallenged.
He further told court that before he went ahead to build the new building on the suit land, an agreement was signed between him, the Appellant and the Respondent. The document indicated different sums paid by both parties to DW3. The agreement was exhibited by the trial court as **DExh 4**. The document was unchallenged though the witness told court that it was the Respondent that had paid him more money.

From the evidence above as taken by the trial court, it is clear that the Appellant contributed to the demolition of the building on the suit land and construction of the new building thereon.

[18] The question that this court has to answer now is that; does the Appellant have any interest or estate in the suit land for his contribution to developing the suit land. If yes, what is the nature of the estate or interest.

The learned trial Magistrate in her judgment at **pages 7 and 8** held that the behavior of the parties indicated that the Respondent/Plaintiff bestowed some form of interest in the building to the Appellant/Defendant. The trial Magistrate found that the interest amounted to 1/3 of the building.

Counsel for the Appellant disagrees with this. While relying on the doctrine of proprietary estoppel, he wants this court to make a finding that the Respondent should share the suit land/building with the Appellant equally.

[19] The doctrine of equitable estoppel precludes a person from denying the existence of a state of affairs which they previously asserted. (**See Tettenborn, A. (1991). Snell's Equity. Twenty-ninth edition at page 568**). An estoppel bars the object of it from asserting some fact or facts, or sometimes, something that is a mixture of fact and law, that stands in the way of some right claimed by the person entitled to the benefit of the estoppel. (**See Yeoman's Row Management Limited and Another vs Cobbe [2008] UKHL 55 at page 10**.)

The estoppel becomes a 'proprietary estoppel – a sub-species of a promissory estoppel – if the right claimed is a proprietary right, usually a right to or over land, it is also equally available in relation to chattels or choses in action.

Proprietary estoppel is one of the qualifications to the general rule that a person who spends money on improving the property of another has

no claim to reimbursement or to any proprietary interest in the property. (**See Snell's Equity (supra) at page 573**).

For the doctrine of proprietary estoppel to arise, the party asserting it must have incurred expenditure or otherwise have prejudiced himself or herself or acted to his or her detriment. (**See Greasley vs Cooke [1980] 1 WLR 1306 at page 1313**). The party must have acted in a belief either that he or she already owned a sufficient interest in the property to justify the expenditure or that he or she would obtain such an interest. (**See Ramsden vs Dyson (1866) L. R. 1 H.L 129 and Inwards vs Baker [1965]2 Q.B. 29**). Finally, his or her belief must have been encouraged either actively or passively by the land owner or his agent or predecessor in title. (**See Hopgood vs Brown [1955] 1 W.L.R 213**

So, in the instant appeal, what is the fact or facts, or matter of mixed fact and law that the Respondent is barred from asserting? And what is the proprietary right claimed by the Appellant that the facts and matters the Respondent is barred from asserting might otherwise defeat?

[20] The pleadings as already noted herein above, do not answer these questions. The unchallenged and accepted documents **DExh 2, 3 and 4** relied on by the Appellant in the trial court indicate without a doubt that the Appellant spent money on construction and improving the property of the Respondent.

The Respondent is estopped from asserting or denying otherwise. I find that the first element of a proprietary estoppel is satisfied by this evidence.

The proprietary claim the Appellant made in his pleadings that his counsel wants this court to protect can be seen in his written statement of defence at **paragraphs 4 and 5**. The Appellant believed the suit land to be his own when he developed it and his claim was for an equal share; two apartments out of the four that both parties had constructed. This was his expectation according to the evidence on the lower court file.

[21] According to the unchallenged evidence of the Appellant at **page 23** of the record of proceedings, he spent the money while the Respondent looked on. As a matter of fact, DW3 the mason corroborated the joint expenditures of both parties. He told court that the Respondent paid him more than the Appellant. This according to this court is encouragement. I therefore find that the third element of a proprietary estoppel is satisfied.

Having found that the evidence and facts in the instant appeal establish the equity of proprietary estoppel. The last question which still remains to be answered is how this equity is to be satisfied.
In seeking to satisfy the equity of proprietary estoppel, court must look at the circumstances in each case differently.

[22] In **Ramsden vs Dyson (supra)** it was held that:

> *"If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the*

landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation." [Emphasis mine]

In the above case, the court had an issue on what remedy it should give to the party that had established the equity of proprietary estoppel. The court persuasively pointed out two choices, the first was to grant a specific interest in the land or grant of a restitutionary remedy such as monetary compensation.

The learned trial Magistrate in the instant case held at **page 8** of her judgment that:

"The Defendant has not proved on the balance of probabilities an interest than some form of agreement to use 1/3 of the building. This court therefore finds that the Defendant is the owner of a life estate in 1/3 of the building with reversionary interest in the Plaintiff. The Defendant therefore is not a trespasser and that claim fails."

I agree with the learned trial Magistrate's conclusion on the type of estate the Appellant ought to enjoy in the suit land (a life estate). I will however depart on the use in terms of size.

This is so because the evidence before me indicates an equal occupation of both parties. When the Appellant expended money in developing

the suit land, his expectation from the evidence on record was occupation of half of the apartments constructed on the land.

It goes without saying, in his evidence that was unchallenged by the Respondent, he told court that at **page 23** of the record that the Plaintiff had occupied two rooms. That he had taken one room which he had so far rented out to five different tenants.

That when the Mbarara-Kabale road was being rehabilitated both parties were assessed compensation for two rooms each and they were paid. That the dispute only arose when the Appellant tried to rent out the second room. The Respondent wanted three out of the four rooms. This I believe was unjustified given the parties' previous conduct

I find that the Appellant is entitled to use ½ as a life estate with a reversionary interest in the Respondent.

This ground of appeal therefore succeeds in as far as it relates to the extent of the occupation the Appellant is entitled to in the suit land.

Consequently, the trial Court's judgment is upheld, this appeal succeeds in the terms herein stated. Each party shall bear their own costs of this appeal given their prior relationship.

I so order.

Dated, delivered and signed at Mbarara this..8th.....day of ..11.....**2022**.

Joyce Kavuma
Judge