THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CV – LD – CS – 014 OF 2015

1. **KAROLE BUZIGE**
2. **SELEVANO KINDO :: PLAINTIFFS**

VERSUS

1. **MUGARRA JOSEPHAT**
2. **KADOMA JOSEPH**
3. **TUHAISE SWITHEN**
4. **BAHEMUKA NICHOLAS :::::::::::::::::::::::::: DEFENDANTS**

BEFORE: HON. JUSTICE VINCENT WAGONA

JUDGMENT

Introduction:

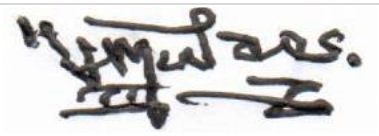
The plaintiffs brought this suit jointly and severally against the defendants for orders that; a declaration that the suit land comprised in FRV 1393, Folio 10, Plot 4, Block 115 (suit land) at Katoosa belongs to the plaintiffs; a declaration that the certificate of title to the suit land was obtained through fraud; an order for cancellation of the defendant's title; a declaration that the defendants trespassed on the suit land, a permanent injunction restraining the defendants, their agents, servants, employees and any person claiming under them from alienating and trespassing on the suit land, general damages for trespass and inconveniences suffered by the defendants and costs of the suit.

The case of the Plaintiffs:

The plaintiffs have at all material times been owners of the suit land at Kiseruka, Kyenjojo District having been in occupation of the same since 1957 and developed the same with eucalyptus trees as old as 30 years, mitoma trees, coffee, avocado, pine trees and a cattle farm. The plaintiffs with intention to obtain a certificate of title obtained a lease offer on 27th September 2002. Subsequently on 16th March 2012, they obtained a freehold offer from Kyenjojo District Local Government. They went ahead and surveyed the land and they are in advanced stages of obtaining a certificate of title.

The defendants are children of the late Tomasi Nyaisoke and for long they have been in occupation of their father's land neighboring the suit land with clear boundaries and are aware that the suit land belongs to the plaintiff. In June 2014, the defendants filed land Misc. Application No. 39 of 2014 seeking to open boundaries for land comprised in LRV 139 Folio 10, Plot 4 Block 115 claiming that the suit land was theirs. Following the issuance of the court order, a survey was carried out on 16th and 17th June 2015 and it was revealed that the defendants had wrongly enclosed the plaintiffs' land into their title.

The title to the suit land was obtained or issued on 21st May 2013 when the plaintiffs were already in occupation and ownership of the suit land for decades. The defendants have continuously attempted to enter the suit land and threatened to injure the plaintiffs and their families and destroyed the plaintiffs' crops on the suit land. The entire process of application, survey, acquisition and registration of the title was tainted with fraud and illegalities.



In 1994, the defendants' father, the late Tomasi Nyaisoke attempted to grab the suit land but court declared that it did not belong to him. The acts of the defendants have caused inconveniences to which the plaintiffs seek to recover an award of general damages.

In reply to the defendant and counter claim, the plaintiff/counter defendants, the current suit is not res-judicata since it was dismissed and the 1st plaintiff was found not to be a trespasser on the suit land which he occupied for a long time.

The case of the Defendants:

The plaintiffs' suit is res-judicata. The plaintiffs have no cause of action against the defendants and the suit is frivolous, vexatious and an abuse of Court process. Without prejudice, the defendants are the dully registered proprietors of the suit land comprised in FRV 1393, Folio 10 having acquired the same on 10th April 2013 free from any encumbrances.

The defendants derived interest from their late father, Tomasi Nyaisoke and they pursued registration of the suit land and there was no fraud in the registration process. The defendants' father took possession of the suit land around 1945 and stayed thereon with subsequent permissions from local chiefs. The defendants later applied for a lease and it was granted but before further steps towards acquisition of the title, the defendants' late father Tomasi Nyaisoke litigated with the 1st plaintiff and court directed that he continues with the registration process.

The defendants included a counter claim seeking a declaration that the 1st to the 4th defendants are the lawfully registered proprietors of the suit land; a declaration that the plaintiffs are trespassers on the suit land, an order of eviction and vacant possession be issued against the counter defendants; a permanent injunction

restraining the plaintiffs/counter defendants from further trespass on the suit land; general damages and costs of the suit.

Issues:

In the scheduling memorandum, the following issues were framed:

1. **Whether the suit is res-judicata.**
2. **Whether the suit land belongs to the plaintiff.**
3. **Whether the defendants' certificate of title was fraudulently obtained.**
4. **Whether the defendants have trespassed on the suit land.**
5. **Remedies available to the parties.**

Hearing and Representation:

Mr. Wahinda Enock of M/s Ahabwe James & Co. Advocates appeared for the plaintiffs while ***Mr. Bwiruka Richard of M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates*** appeared for the defendants. The parties filed written submissions which I have considered.

Burden of Proof and Standard of proof:

The plaintiff bears the burden to prove his/her claim on the balance of probabilities. Section 101 of the Evidence Act is to the effect that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist. (See also ***Kamo Enterprises Ltd Vs. Krytalline Salt Limited, SCCA No. 8 of 2018***).

Issue No. 1: Whether the suit land is res-judicata.

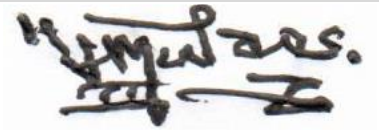
Submissions for the Plaintiffs:

Section 7 of the Civil Procedure Act bars court from hearing a case that is res-judicata. In ***Akuku Ebifania v Victoria Munia & Anor, Civil Appeal No. 0027 of 2016, Mubiru J*** observed that res-judicata is proved if it is demonstrated that: ***(a) There was a former suit between the same parties or parties under which they claim litigating under the same title; (b) There was a final decision made on merits; (c) The decision was made by a Court of competent jurisdiction; (d) That the fresh suit concerns the same subject matter i.e the same matter in dispute was directly and substantially the same in the former suit.***

The defendants' written statement of defense demonstrates that the claims in the former suit and in the current suit are different. There are two judgments relied upon by the defendants, one delivered on 18th December 1987 and another on 2nd March 1999. In the judgment of 1987, it is not clear regarding the land that was in dispute. In the subsequent one of 1999, court declared that the suit land was public land. In the current suit, the claim is not whether or not the suit land is public land. The claim by the 1st plaintiff in the current suit is that the land formerly belonged to Aripo and has never been under litigation.

The current suit is premised on fraud and cancellation of title for land comprised in FRV 393, Folio 10, Plot 5, Block 115; land at Katoosa which was illegally acquired by the defendants in 2013. In the former suit, the issues to be tried were not fraud and land being titled. In ***Akuku Ebifania (Supra),*** it was guided that the pleadings must not only prove that the physical subject matter in the former suit is that same but also that the issues which were determined were similar to those in the current suit. The subject matter in the current suit is fraud and cancellation of title which were never adjudicated upon in the former suit.

Submissions for the Defendants:



There are two judgments against the 1st plaintiff by the late Tomasi Nyaisoke, father of the defendants. In the first one of 1987 which was heard exparte, court directed that the boundaries planted by the 1st plaintiff be removed and the ones planted by the former Parish Chief, Asanasio Kabuleeta be re-instated. In the subsequent one of 1994, it was heard interparty and the 2nd plaintiff testified as a witness and His Worship Paul Gadenya delivered judgment in 1999 in favour of the defendants' late father.

The 1st plaintiff (PW1) and the 2nd plaintiff (PW3) confirmed in cross examination that the suit land in MFP 32 of 1994 was the same as the current suit. In the said suit, court found that Karoli Buzige was not the customary owner of the suit land. It was further found that Tomasi Nyaisoke had not accepted the lease offer and the land was still public land and court advised him to pursue the process and secure a certificate of title. The defendants are sons of the late Tomasi Nyaisoke and the 1st defendant is the administrator of his estate per DE1. The defendant continued the process in compliance with the judgment. After the judgment, the late Tomasi paid the balance of the fees for preparation of the lease (DE4) and the earlier payments are reflected on DE5 and DE6.

The land office received PE8 stopping the processing of the title to the suit land to the 1st plaintiff on account that the land for the late Tomasi should not be included in the title for the 1st plaintiff. In the current suit, the plaintiffs still claim the suit land as customary owners yet court had previously pronounced itself over the same. This suit is thus res-judicata.

CONSIDERATION BY COURT:

Section 7 of the Civil Procedure Rules Cap. 71 provides that:

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court."

In ***Ponsiano Semakula Vs. SusaneMagala& others (1993) KALR 213*** court gave the broad contours of section 7 of the Civil Procedure Act thus:

"The doctrine of res-judicata, embodied in S.7 of the Civil Procedure Act, is a fundament doctrine of all courts that there must be an end of litigation. The spirit of the doctrine succinctly expressed in the well-known maxim: 'nemo debt bisvexari pro una et eada causa' (No one should be vexed twice for the same cause). Justice requires that every matter should be once fairly tried and having been tried once, all litigation about it should be concluded forever between the parties. The test whether or not a suit is barred by res-judicata appears to be that the ***plaintiff in the second suit trying tobring before the court in another way and in the form of a new cause of action****,* ***a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon****.* ***If so, the plea of res-judicata applied not only to points upon which the first court was actually required to adjudicate but to every point which properly belongs to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time****". (Emphasis is mine).*

The Supreme Court in ***Karia and Anor Vs. Attorney General & others (2005) 1 E.A 83 and Mansukhal RamjiKaria & Anor Vs. Attorney General & others, Supreme***

Court Civil Appeal No. 20 of 2002, observed that for res-judicata to arise, the following must be satisfied thus: (a) There has to be a former suit or issue decided by a competent court; (b) The matter in dispute in the former suit between the same parties must also be directly or substantially in dispute between the parties in the suit where the doctrine of res-judicata is pleaded as a bar; (c) The parties in the former suit should be the same parties or parties under whom they or any of them claim litigating under the same title.

The matter directly and substantially in issue in the current suit must have been heard and finally disposed of in the former suit (***see the case of Lt David Kabarebe v. Major Prossy Nalweyiso C.A Civil Appeal No.34 of 2003).*** The case should have been heard on merit or there must be a full contest where each party is given an opportunity to present his or her case and lead evidence to that effect and a decision is arrived at on merit. Where a suit is dismissed on a point of law which does not substantially dispose of the subject matter on merits, then the pleas of res-judicata does not arise. (***see Bukondo Yeremiya v. E. Rwananenyere [1978] HCB 96 & Onzia Elizabeth v Shaban Fadul, HCCA No. 19 of 2013).***

(a) There has to be a former suit or issue decided by a competent court on merit:

The defendants presented two judgments: The Judgment delivered on 18th December 1987 by the His Worship P.N Irembe (Magistrate Grade II) **(Exhibit DE9)**. Another judgment in MFP 32 of 1994 delivered by His Worship Paul Gadenya (as he then was) on 2nd March 1999 **(Exhibit DE7).**

In the first judgment delivered on 18th December 1987 the parties there were Tomasi Nyaisoke as plaintiff and **Karoli Buzige** as the defendant. The case involved

removal of boundary marks by the defendant. Court ordered that the boundaries planted by the defendant be removed and the ones planted by the former parish chief Asanasio Kabuleeta were upheld. Miramura, Mitoma, Migorogoro or enkoni trees were to be planted on the approved boundary by the areas Sub County Chief in collaboration with the Chairman R.C. III Nyantungo. The boundaries were to commence from below at the base of the stream or swamp called 'Nyamambukabiri' then to extend up to the Omhororo tree and up to the plaintiff's home. Court further directed that the Miramura and Mitoma trees wrongly planted by the defendant as boundary marks in the land shall be removed by the authority mention in (3) above in the decree.

In the second judgment in MFP 32 of 1994 delivered on 2nd March 1999 (DE7), the parties were Tomasi Nyaisoke as plaintiff and **Karole Buzige** as the defendant. Court in its orders declared interalia, that the suit land was public land and not property of the plaintiff or the defendant. Court further declared that the defendant does not customarily own any of the disputed land.

I find that there exist former suits or issues decided by competent courts on merit. This ground is proved.

(b) The matter in dispute in the former suit between the same parties must also be directly or substantially in dispute between the parties in the suit where the doctrine of res-judicata is pleaded as a bar:

Mr. Wahinda for the plaintiffs asserted that the land claimed by the plaintiffs is one that formerly belonged to Alipo, now owned by the plaintiffs which was wrongly included in the defendant's title. That just like the judgment dated 18th December 1987 related to a different piece of land, equally the one in MFP 32 of 1999 related

to a different piece of land which was found to be public land not the suit land which is part of land that belonged to Alipo. Mr. Bwiruka on the other hand maintained that the land is the same.

In the first judgment of 18th December 1987, the case was heard and concluded exparte. The issue which was subject of adjudication concerned boundary marks. Court directed that the boundaries marks which were erected by the defendant (1st plaintiff) be removed and the ones approved by the authorities be replanted and court guided on how the same were to be replanted. Court went ahead and described the land on which approved boundaries were to be planted starting from the base at a stream or swamp called '***Nyamabukabiri***' then extend up to Omuhoro tree up to the plaintiff's home.

In the second judgment in MFP 32 of 1994 dated 2nd March 1999, the subject matter was land described in the lease offer dated 9th March 1984. It was contended by the plaintiff in the said suit that the defendant (1st plaintiff) had encroached on the same and he sought among others an order of eviction against the defendant. In the final resolution by court, it was declared that the said land was public land; neither the plaintiff nor the defendant owned the same. That until the plaintiff complied with the conditions in the lease offer he had no protectable or register-able interest in the land. He was thus advised to pursue the process until a certificate of title was granted to him. Court further declared that the defendant (1st plaintiff) did not own the land in dispute and was not the customary owner of the same.

PW1(Karole Buzige) in his examination in chief stated under paragraph 9, that after long use of the suit land, Yowasi Nyaisoke (RIP), father to the defendants started claiming its ownership. That in 1994, he filed Civil Suit No. 32 of 1994 against him and court declared that the land did not belong to the late Tomasi. He attached the

judgment in MFP 32 of 1994 dated 2nd March 1999 which was admitted as Pexh1. In cross examination he admitted that there was a previous suit. That he also knew Asanasio Kabuleta as the Parish Chief who put boundary marks between his land and that of the late Nyaisoke. PW1 further confirmed while at locus that in Civil Suit No. 32 of 1994, he was the one that sued Nyaisoke and that the litigation was about the same suit land as in this case.

PW2 (Mwesige Expedito) corroborated PW1 that he was aware of Civil Suit No. 32 of 1994. That Nyaisoke, father to the defendant filed the case over the suit land which was dismissed. In cross examination he stated that court declared the land to be public land.

PW3 (Selevano Kiido) testified in his evidence in chief that he was aware of the case filed by Tomasi Nyaisoke (referring to Civil Suit No. 32 of 1994) which was dismissed. That he was a witness in the said case. In cross examination he stated that the suit was filed by Nyaisoke Tomasi and court declared that the land was public land. That they later applied for a lease over the suit land and the process was blocked by Tomasi Nyaisoke. That his parents settled on the land in 1957 and after their death, they continued living thereon. PW3 further stated in cross examination while at locus thus; '***The suit land is the same land that was litigated between Tomasi Nyaisoke and the 1st plaintiff in 1994. I participated in that suit as a witness. Court found that the land was public land.***"

DW1 (Mugarra Josephat) testified in chief that the land in dispute in the current suit was the subject matter in two former suits. He went ahead and presented the first judgment dated 18th December 1987 which was admitted as DE9 and the one in MFP 32 of 1994 dated 2nd March 1999 as DE7.

I have evaluated the evidence against the submission made for the plaintiffs that the suit land in the current suit is different. It was contended for the plaintiffs that the land claimed by the plaintiffs is that which formerly belonged to Alipo and not the one in the former suit. This position is challenged when one considers the following. In MFP 32 of 1994, the 1st plaintiff (defendant in the former suit) had claimed that the suit land originally belonged to Alipo and that when Alipo died, his parents applied for the same and it was granted to them; that when his parents died, he inherited the land and had been on the same since 1959. (See page 5 of DE7).The learned trial magistrate at page 7 of the judgment (DE7) found as follows: "***It is of course true that the defendant owns land in this area. But his land should be limited to what was Alipo's land which the defendant's parents took over and subsequently passed to the defendant after their demise. This land is held by the defendant under customary tenure and is different from the land offered to the defendant in the lease offer." (Emphasis).***

The available evidence demonstrates and it is my finding that the land in dispute in the suit in MFP 32 of 1994 whose judgment was delivered on 2nd March 1999 is the same land that is the subject of the dispute in the current suit.

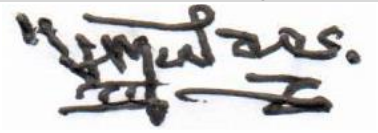
The second argument by Mr. Wahinda is that the issues for trial in the former suit are different from the ones in the current suit. He argued that the plaintiffs in the current suit challenged the defendant's title on account of having been obtained through fraud which was not adjudicated upon in the former suit. I have considered the judgment of Court in the former suit and the averments by the plaintiffs in the current suit. In the former suit, the 1st plaintiff (defendant) contended that the land in dispute formerly belonged to Alipo who after his death, his parents applied for the same and it was granted to them; that after their death, the suit land was passed to

the 1st plaintiff (defendant in the former suit MFP 32 of 1994). He thus contended that he was a customary owner of the said land.

The trial magistrate held that: **"*All the court can make is a declaration that the defendant does not customarily own any of the disputed land...*" He also observed that; "*Finally it is the considered finding of this court that the land in dispute is public land and does not belong to the defendant under customary tenure. The plaintiff who until he complies with the conditions of the lease offer has no protectable or registrable interest in this land. He is well advised to pursue the process until a certificate of title is granted to him*."**

The plaintiffs in the current suit contended among others under paragraph 4 of the plaint that: **"*The plaintiffs have at all material times been owners of the suit land situate at Kiseruka in Kyenjojo District having acquired and occupied the same since 1957 and have developed the same with eucalyptus trees some as old as over 30 years, mitoma trees, coffee, ovacado, fenne, pine trees and a cattle farm. That the plaintiffs with intention to obtain a certificate of title applied for the land and obtained a lease offer from the Uganda Land Commission. That the plaintiffs subsequently obtained a freehold offer from Kyenjojo District Land Board a copy of which is dated 16th March 2012.*"**

It is apparent from the plaint, that the claim by the plaintiffs over the suit land stems from their claim that they were owners of the suit land since 1957. The question as to whether the plaintiffs were not owner of the suit land or not was formerly adjudicated upon and court declared that the 1stplaintiff was not a customary owner of the suit land. Therefore, the foundation of their locus standi to challenge the title issued to the defendants stems from their claim that the land was formerly theirs since 1957 and court already declared that they were not the owners of the same.



Therefore, since the plaintiffs had no legal or protectable interest in the suit land since 1999 when the judgment was delivered in MFP 32 of 1994, then they lacked the locus to challenge the title subsequently issued to the defendants.

I therefore agree with Mr. Biwruka for the defendant that the subject matter in the former suit and in the current suit is the same. This grounds is proved.

(c) <u>The parties in the former suit should be the same parties or parties under whom they or any of them claim litigating under the same title</u>.

The parties in MFP 32 of 1994 were Tomasi Nyaisoke as plaintiff and Karole Buzige as defendant. In the said suit, the plaintiff (Late Tomasi Nyaisoke) claimed the land was his and that he had obtained a lease over the same from Uganda Land Commission. The defendant (1st plaintiff) on the other hand contended that the land formerly belonged to Alipo who after his death, the same was passed to his parents; hat after the death of his parents, he assumed ownership of the same. In the current suit, the plaintiff laid the same claim. The defendants on the other hand claim that the land was for their late father who after his death was passed to them as his children. DW1 presented DE1 being letters of administration to the estate of his late father. Therefore whereas the defendants in the former suit are different from the ones in the current suit, the defendants' title traces its origin from the late Tomasi Nyaisoke who as a party to the suit. The plaintiffs rightly admitted in the plaint and their witness statements that they had ever litigated with the late Tomasi Nyaisoke and attached the judgment in MFP 32 of 1994.

Therefore the parties in the former suit and in the current suit are the same since the defendants claim title from the late Tomasi Nyaisoke who was a party to MFP 32 of 1994.

(d) <u>That the fresh suit concerns the same subject matter i.e the same matter in dispute was directly and substantially the same in the former suit</u>.

In the current suit the plaintiffs sought a declaration that the suit land comprised in FRV 1393, Folio 10, Plot 4, Block 115 (suit land) at Katoosa belongs to the plaintiffs; a declaration that the certificate of title to the suit land was obtained through fraud; an order for cancellation of the defendant's title; a declaration that the defendants trespassed on the suit land. In Civil Suit No. MFP 32 of 1994 the plaintiff was claiming ownership of the same land except that at that time he pleaded that it was described in a lease offer form and the applicant was pursuing a lease. Therefore the current suit which is the fresh suit concerns the same subject matter as in the former suit. This ground is also satisfied.

The defendants' claim succeeds on the basis of the finding that this suit is res-judicata.

<u>COUNTER CLAIM:</u>

The defendants included a counter claim in which contended that the plaintiffs were trespassing on the suit land. They averred that the suit land belonged to their late father who passed the same to them. They afterwards obtained a title to the same. The counter defendants on the other hand maintained that the land was theirs and they were in use of the same.

Mulenga JSC (RIP) in ***Justine E.M.N Lutaya Vs Stirling Civil Engineering Co. Ltd, SCCA No. 11 of 2002*** gave a definition of what constitutes trespass thus:

"***Trespass to land occurs when a person makes an unauthorised entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that land. Needless to say, the tort of trespass to land is***

committed, not against the land, but against the person who is in actual or constructive possession of the land. At common law, the cardinal rule is that only a person in possession of the land has capacity to sue in trespass. Thus, the owner of an unencumbered land has such capacity to sue, but a landowner who grants a lease of his land, does not have the capacity to sue, because he parts with possession of the land...”

An action for the tort of trespass to land is for enforcement of possessory rights rather than proprietary rights. The gist of an action for trespass is violation of possession, not challenge to title. (See ***Odek Alex & Anor Vs. GenaYokonani& 4others, Civil Appeal No. 0097 of 2017***). In the case of registered land, a person holding a certificate of title has, by virtue of that title, legal possession, and can sue in trespass (See ***Justine E.M.N Lutaya vs. Sterling Civil Engineering Co. Ltd, SCCA No. 0009 of 2017***).

In the present case, the counter claimants led evidence to prove that they are the registered proprietors of the suit land and the title to the same was admitted as DE2. That the land was trespassed upon by the counter defendants who have been cultivating the same, planting crops thereon and grazing cattle on the suit land and entering the same without their consent. PW1, PW2 and PW3 admitted that they were in possession of the suit land asserting ownership. At locus, it was confirmed that the indeed PW1 was using the suit land and it was without the consent of the registered proprietors.

I have already found that the claim by the counter defendants is res-judicata, the court in the former suit having found that they had no interests in the suit land. Their continued stay on the land in dispute amounts to trespass. It is not in contestation that no consent was sought by the counter defendants from the counter claimants as

the registered proprietors of the suit land. The counter defendants are trespassers to the suit land and are hereby declared as so. The counter claim succeeds. The plaintiffs' suit is res-judicata and is hereby struck out.

General Damages:

Turning to the claim of general damages, I am aware that the principle of law is that "general damages are such damages as the law presumes to be the natural or probable consequence of the Defendant's act and need not be specifically pleaded. It arises by inference of law, and need not, therefore, be proved by evidence, and may be averred generally. In assessment of general damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that the innocent party may have been put through and the nature and extent of the breach suffered. In ***Charles Acire versus Myaana Engola HCCS No. 143 of 1993*** it was also held that: "*A Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in the position he or she would have been if she or he had not suffered the wrong."* It is also trite law that in exercising the discretion to grant general damages, court should not punish the Defendant for the breach but, rather put the Plaintiff in the position he or she was prior the breach complained of. See ***Boschcon Civil & Electrical Construction Co., (U) Ltd versus Salini Construttiri Spa HCCS No. 151 of 2008*.**

In the case of ***Takya Kushwahiri & Another versus Kajonyu Denis CACA 85*** of 2011 it was held that general damages should be compensatory in nature in that they should restore some satisfaction as far as money can do it to the injured Plaintiff.

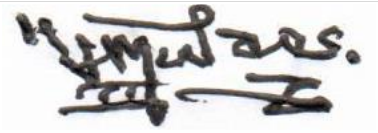
The plaintiffs averred that they have used the suit land to grow eucalyptus trees, mitoma trees, coffee, avocado, fenne, pine trees and a cattle farm. The defendants

averred that they have suffered inconvenience as a result of the plaintiffs entering their land without their consent and they have been greatly inconvenienced

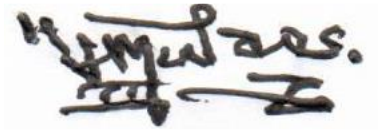
Taking account of the inconvenience suffered by the Plaintiff as a result of the Defendant's acts, I am inclined to award Ugshs.30,000,000/- as general damages to the Defendants / counter claimants.

The counter claimants' counter claim succeeds with the following orders:

1. **That the plaintiff's suit (HCT – 01 – LD – CS – 014 of 2015) is res-judicata and is hereby struck out.**
2. **A declaration doth issue that the 1st to the 4th defendants are the lawfully registered proprietors of the suit land comprised in FRV 1383, Folio 19, Plot 4, Block 115 land at Katoosa.**
3. **A declaration doth issue that the counter defendants Karole Buzige and Selevano Kindo are trespassers on the suit land.**
4. **The counter defendants Karole Buzige and Selevano Kindo are hereby ordered to vacate the suit land within 3 months from the date of delivery of this judgment, in default of which, an order of eviction hereby issued against the counter defendants shall be activated.**
5. **A permanent injunction doth issue restraining the plaintiffs/counter defendants and their agents or any other person from further trespass on the suit land.**
6. **General damages of shs 30,000,000/= awarded to the defendants/counter claimants.**
7. **Interest on general damages at 20% per annum from the date of delivery of this judgment till payment in full.**
8. **Costs of the suit are awarded to the defendants/counter claimants.**



I so order.



Vincent Wagona

High Court Judge

FORTPORTAL

DATE: 05/04/2024