

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA (COA) AT KAMPALA

CIVIL APPEAL NO.0016 OF 2010

(Arising from judgment of the High court (Land division) civil suit no. 434 of 2008
5 *dated 26th of August 2009 delivered by the Hon. Justice Mr. Rubby Aweri Opio)*

MICHEAL MULYANTI & ANOTHER ::::::::::::::::::::APPELLANTS

VS

JACKLINE BATARINGAYA &4 OTHERS:::::::::::::::::: RESPONDENTS

CORAM;

10 **HON. MR. JUSTICE KENNETH KAKURU, JA**

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF THE COURT

15 This is a first appeal against the judgment of the High Court of Uganda (Land
division) delivered by the Hon. Mr. Rubby Aweri Opio in Civil Suit No.434 of 2008
delivered on 26th day of August 2009. The learned trial Judge in that case found
for the respondent against the appellant on grounds that the appellants inter alia
were mere caretakers on the suit land but not Lawful and or bonafide occupants.
He also ordered the appellants to vacate the suit land. The appellants being
20 dissatisfied with the judgment filed this appeal.

Background

The appellants sued the respondents in their capacity as administrators to the estate of the late Moses Mulyanti and for the beneficiaries of his estate. The appellants contended that they were lawful occupants of land comprised in Kibuga Block 27, Plots 9, 17 [now 556] and 126 situate at Makerere Kikoni (hereinafter referred to as the "Suit Property") in Kampala. The Appellants sought declarations; that they were lawful and or bonafide occupants on the suit land, a permanent injunction restraining the defendant from interfering in the occupation and use of land, that they were entitled to general damages, special damages, punitive damages and costs of the suit. The plaintiff's case at the trial Court was that the late Moses Mulyanti had occupied the land for over thirty years without any interruption and thus qualified to be a lawful of bonafide occupant of the land. It was on the other hand the case of the defendants that they were the registered proprietors of the land comprised in Kibuga Block 27 Plots 9, 17 and 126. The learned trial Judge in his Judgment found that the appellants were not lawful or bonafide occupants on the said land and consequently ordered that the plaintiffs vacate the land.

The plaintiffs being dissatisfied with the said Judgment of the trial judge filed this appeal and set out four grounds of appeal namely;

1. The learned trial judge failed to properly evaluate evidence on record and thus came to a wrong conclusion.
2. The learned trial judge erred in law and fact when he held that the plaintiffs were not lawful or bonafide occupants of the suit land or part of it.

3. The learned trial judge erred in law and fact when he held that the plaintiffs were not entitled to the remedies and reliefs sought.

4. The learned trial judge erred in law when he held that the defendants were entitled to vacant possession of the suit land and to evict the occupants thereon.

5

REPRESENTATIONS

The appellant were represented by Ms. Jackline Natukunda while the respondent was represented by Mr. James Mukasa Ssemugenyi.

This appeal had previously been heard by another panel. However some of the panel members left the court before they were able to render judgment in the appeal. Both counsel prayed and this newly constituted panel agreed that Court consider the submissions of the parties that were already on record. We shall proceed to do that.

10

Duty of the court

This is a first appeal and therefore this court is charged with the legal duty of reappraising the evidence and drawing inferences of fact as provided for under Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions SI 13-10 (hereinafter referred to as the rules of this Court). This court also has the duty to caution itself that it has not seen the witnesses who gave testimony first hand. On the basis of its evaluation this court must decide whether to support the decision of the High Court or not as illustrated in **Pandya vs. R [1957] EA 336** and **Kifamunte Henry vs. Uganda Supreme Court Criminal Appeal No.10 of 1997**.

20

We shall address grounds one and two together since in our view, they are connected.

Legal Arguments

Ground one and two

- 5 **Whether the learned trial judge failed to evaluate evidence and thus came to a wrong conclusion and**

The learned trial judge erred in law and fact when he held that the plaintiffs were not lawful or bonafide occupants of the suit land or part of it.

Submissions for the Appellants

- 10 Counsel for the appellant's raised four lines of argument under these grounds.

First, it is the case for the appellants that before they were evicted, they were lawful occupants of the suit land.

- Counsel for the appellants submitted that the appellants' father the late Moses Mulyanti entered onto the suit land in 1970 with the consent of the respondent's
15 Late father (Basil Bataringaya) and utilized the land till his death in 2001. He submitted that Section 29 (1) (b) of the Land Act defined a lawful occupant as a person who had entered onto registered land with the consent of the owner. He further submitted that it is an uncontested fact that the late Moses Mulyanti entered on to the suit land with the consent of the late Basil Bataringaya. He
20 further pointed out however that the Respondent and daughter of the late Basil Bataringaya (DW2 Aisha Bataringaya) testified that she did not have the

background between her late father Basil Bataringaya and Moses Mulyanti the father of the respondents and how the latter came on to the suit land.

Counsel contested a finding by the trial Judge that the late Moses Mulyanti sold the suit land to the Bataringaya family. Instead the evidence at the trial showed
5 that Bethel Mulyanti sold the land to Godfrey Lule who subsequently sold it to Basil Bataringaya in the years 1968 and 1969 respectively. Thereafter the Moses Mulyanti came onto the land in 1970 in his own right.

Secondly, the appellants contested the assertion by the respondents that when Moses Mulyanti died, his family lost all their legal interest on the suit land and
10 those who remaining on the land (the appellants) were mere licensees.

Counsel for the appellants argued that there was no evidence that the appellants were granted any licence by the registered proprietor. He submitted that for this to be so, evidence of such an alleged licence was necessary and in this regard he referred us to the case **of Kampala Land Board V Babweyaka (SC) CA No 2 of**
15 **2007**. He further argued that while on the suit land the appellant's father Moses Mulyanti was not subjected to any condition or qualification and therefore had exclusive rights of use to the land.

Counsel further submitted that land grant to another under a licence must be controlled by the registered proprietor during the period of the licence which was
20 not the case here. He further argued that the late Moses Mulyanti had occupied the land from 1970 to 2001 without any condition or qualification and actually enjoyed exclusive use and possession of the land (i.e. he was not paying any rent). Counsel also submitted that Moses Mulyanti could not have been a licensee,

because he had constructed permanent structures on the suit land and even rented some of property out.

Counsel for the Appellant went ahead to define the meaning of a lawful occupant according to Section 29 of the Land Act as a person who entered onto the suit
5 land with the consent of the registered owner. Counsel then argued by reason of the late Moses Mulyanti's consensual entry, occupation, utilization and development of the suit land over a period of 30 years, he was lawful occupant and had an interest in the land which was inherited by the Appellants by operation of the law.

10 Thirdly, it is the case of the appellants that the appellants in the alternative were also bonafide occupants within the meaning of the Constitution of Uganda and the Land Act.

Counsel for the Appellants argued that the qualifications to be a bonafide occupant or lawful occupant laid as down by the learned trial Judge fell outside
15 the provisions of the Act (i.e. that bonafide right must be actual or real and have an unchallenged right to the land). He argued that though the trial Judge had properly alluded to the case of **Kampala District Land Board V National Housing Corporation** (SC) CA No 2 of 2004 as to the definition of a bona fide occupant, the trial Judge then went on to wrongly apply the law.

20 He argue that once there was evidence to show that the late Moses Mulyanti occupied the suit land, utilized and developed it unchallenged from 1970 to 2001 then after 2001 he qualified as a bonafide occupant; as he was not challenged on the suit land for a period in excess of twelve years before the coming into force of the 1995 Constitution.



Fourthly, it is the case for the appellant that the trial Judge erred in law and fact when he ordered for the eviction from the suit land and then granted vacant possession to the respondents.

5 Counsel for the appellants' argued that if it was correct to evict the Appellants then they should not have been evicted without compensation. He referred us to the case of **Fredrick Zaabwe V Orient Bank and others** (SC) CA No 004 of 2006 where it was held that even where one has lost entitlement to utilization or occupation of land, he/she is still entitled to adequate compensation for his/her interest and development on land.

10 **Submissions for the Respondents**

Counsel for the respondent opposed the appeal. He submitted that the trial Judge had properly evaluated the evidence before him and made correct findings of fact; hence came to a correct final judgment.

15 He submitted that in contention with regard to the suit land was not eight acres as alleged by Michael Mulyanti (PW1) but only a portion of it measuring approximately 0.35 of an acre where the late Moses Mulyanti (father of the Appellants) was allowed to reside by the late Basil Bataringaya (father of the Respondents). He further argued that this was the Respondents pleaded case at the trial court (Paragraph 8 of the Written Statement of Defence).

20 Counsel for the respondents submitted that the respondents were not lawful occupants of the suit land as contended by them. He raised six reasons to demonstrate this.

First, the late Bataringaya did not invite the late Moses Mulyanti on to the suit land but rather he was already on the land as the son of the late Besweri Mulyanti the original owner. It was the late Besweri Mulyanti who sold the suit land to J. S. Lule who then sold ~~it again to the~~ late Bataringaya the father of the respondents.

5 However the late Moses Mulyanti the son of the late Besweri Mulyanti on realizing that the late Basil Bataringaya had bought the suit land then challenged Basil Bataringaya's ownership by going to court in 1970 and placing a caveat on the suit land. Subsequently this dispute between the parties was settled and the late Moses Mulyanti withdrew his claim and agreed to care take the suit land for

10 the Late Bataringaya. Counsel argued that the late Moses Mulyanti could not therefore fall under the category of an unchallenged occupant. Counsel further submitted that at no time did the late Moses Mulyanti consider himself a lawful and or bonafide occupant of the suit land; but rather he had a good relationship with the Bataringaya family. Counsel argued that in these circumstances, Moses

15 Mulyanti could not be considered as having exclusive use of the land. On the contrary, counsel submitted that it is Bataringaya family which had control over the land as they at one stage even gave a portion of it to one of their cousins to develop into a hotel. Counsel for the Respondents submitted that the claim by the appellants was therefore just an afterthought trying to erroneously take the

20 benefit of the changes in the land law brought about by the 1995 Constitution.

Secondly, as to the claim that the respondents were bibanja holders or had adverse possession on the suit land, counsel for the respondents submitted that respondents sought only to cast a wide net of possibilities in the hope that they would get something. Counsel for the Respondents submitted that this was the

25 approach used by the Appellants in the trial Court even though now on appeal the

appellants now focus on the legal principles of lawful and bonafide occupant. In this regard he argued that the appellants simply wished to claim the suit land or alternatively get compensation for it.

Thirdly, the late Moses Mulyanti never raised a claim that he was a bonafide occupant, lawful occupant and or Kibanja holder and that the claim is now only
5 being made by the Appellants because Moses Mulyanti is dead. Indeed the fight for supremacy of the suit land between the Appellants and Respondents only began when Moses Mulyanti died. Furthermore Nakato (PW3 who remained on the suit land with her two daughters) was not a wife of the late Moses Mulyanti
10 and was just brought in to testify that there was a continuation of occupancy justified under the Constitution.

Fourthly, there was no reason for the Respondents to challenge the occupancy of the Late Moses Mulyanti because a challenge had occurred in court in 1970 which was resolved when the Late Moses Mulyanti recognised the late Bataringaya as
15 the owner of the suit land. Indeed there are other squatters on the same suit land who recognise the Bataringayas' as the land lords. The said squatters were willing to surrender their portions of land to the Respondents who they now recognise had become of age and wanted their land back.

Fifthly, counsel for the respondent submitted that even with the death of Moses
20 Mulyanti, the suit land was not mentioned as part of his interest when his family was applying for letters of administration in 2004. This showed that the late Moses Mulyanti did not consider the suit land as his.

Sixthly, the trial Judge correctly took the view that the Respondents were licensees within the meaning of Section 29 (4) of the Land Act even though in the



Judgment the wrong Section for this was inadvertently quoted as Section 40 of the Land Act. The Respondents could therefore not be taken to be lawful or bonafide occupants. Counsel relied on the Supreme Court decision of **George Tuhirirwe v Caroline Rwamuhanda Civil Appeal no 15 of 2007** for the meaning of a lawful occupant of land.

Court's finding and decision

We have addressed our minds to the submissions of both counsel and the authorities supplied for which we are grateful.

This is clearly a dispute between the estates of two persons who are said to have had dealings in the suit land both of whom have passed away. The nature of the relationship that the deceased parties had appears not to have been fully appreciated by their surviving children hence this protracted litigation.

The Appellants in their pleadings at the High Court claim that the late Moses Mulyanti was a lawful and or bonafide occupant of the suit land (even though throughout the trial the term Kibanja holder is used) because he occupied the land from 1970 to 2001 with the consent of the registered owner.

The Respondents deny that the Appellants are lawful or bonafide occupants because the Appellant's late grandfather Besweri Mulyanti had sold the suit land (inclusive of the house there on) to Mr. Godfrey Lule who in turn sold it to the Respondent's late father Mr. Basil Bataringaya in 1968. It is then the late Basil Bataringaya who allowed the Late Mr. Moses Mulyanti (after some original disagreement with him) to remain on the land as a caretaker. The Appellants were therefore on the suit land after the said sale as licensees.

It is necessary to carefully to reevaluate the history of this dispute in order to establish the legal rights of the parties.

It appears to us that the history of the land can be discerned from the documentation at ~~pages 104~~ and 105 of the Record of Appeal (hereinafter referred to as the "ROA"). The late Mr. Besweri Kisalita Mulyanti was the registered proprietor of the suit land. On the 15th November 1968 he sold the suit land to Mr. Godfrey Lule for Ugx Shs 6,000/= (which must have been a considerable amount in those days). Almost a month later on the 20th December, 1968, Mr. Godfrey Lule then sold the suit land to the Late Mr. Basil K. Bataringaya for the sum of Ugx Shs 7,000/= (making a profit of Ug Shs 1,000/= on his previous transaction). This in our understanding was a straight forward land conveyance. The original owner was the Late Mr. Besweri Mulyanti who sold his interest to Mr. Godfrey Lule who subsequently sold that interest to the Late Mr. Basil Bataringaya. Wherein then lies the cause of the dispute? It would appear that when the late Mr. Besweri Mulyanti sold the suit property he died before he gave vacant possession to the new buyers. The late Mr. Besweri Mulyanti's children and in particular the late Mr. Moses Mulyanti then contested the sale of the suit property and put a caveat on thereon. This led to a suit **Basil Bataringaya V Moses Mulyanti** Miscellaneous Cause 7 of 1970. This matter was settled with the withdrawal of the caveat by the late Mr. Moses Mulyanti and his recognition of the Late Mr. Basil Bataringaya as the proprietor of the suit land. It appears that with this arrangement came another relationship which unlike the first was not documented. It is the case for the Respondents that their late father then allowed the late Mr. Moses Mulyanti to be a caretaker of the suit land together with his sister in return for his use of the land. The fourth Respondent testified at the trial

Court (page 153 ROA) that her late father had allowed the late Mr. Moses Mulyanti to build semi-permanent quarters to house his workers. The late Mr. Basil Bataringaya was then murdered in 1972 during the turbulent time of Idi Amin. His wife was also murdered in 1977 by soldiers of Idi Amin's government. At
5 the time the Respondents were young and their estate was administered by The Administer General as they could not manage their affairs.

As it is Mr. Moses Mulyanti continued to live on the suit land until he died in 2001.

For the Appellants, the administrators of the late Mr. Moses Mulyanti's Estate
10 (according to a grant given on the 29th July 2004) who are parties to this appeal are Michael Mulyanti (his brother) and Sam Mulyanti (his Nephew). According to the testimony in the trial Court of the first Appellant, the other beneficiaries are

1. Rosemary Mulyanti (a sister)
2. Ronald Mulyanti (a Nephew and customary heir)
- 15 3. Nakato Yudaya (referred to as a common law wife/mistress)
4. Medina Nansubuga (daughter to Nakato but from a different person not being Moses Mulyanti).

These are beneficiaries together with some other nieces and nephews. Of all the stated beneficiaries, only Nakato and Nansubuga stay on the suit property.

20 The first Appellant in the trial Court further testified that he had the suit on the grounds that the beneficiaries were Kibanja holders in possession on the suit land (Page 125 ROA). He further testified that at the time of the death of the Late Mr. Moses Mulyanti had developments on the suit land and had stayed there unchallenged. He testified that;

25 *"... He had built main house and two small houses..."*



A simple review of all the evidence will show that the above testimony by the first Appellant was not completely truthful as the main house was built by the Late Besweri Mulyanti as the second Appellant later clarified (page 136 ROA) and was part of the conveyance conducted in 1968.

5 Nakato on the other hand at the trial Court testified that she was on the suit land by virtue of the Mulyanti family; who continue to support her. She was not clear as to how this came about. At one point she testified that the Late Mr. Moses Mulyanti *"...was my friend..."* (Page 140 ROA). At another point she testified that *"...Yes I belong to the family of Mulyanti in the sense that I was a girlfriend of*
10 *Moses..."* (Page 142 ROA).

Her relationship with the Late Moses Mulyanti is nothing but a mystery. At one point Nakato testifies (page 141 ROA)

" Yes father of my daughter Medina is called Kiwanuka.*

- *Yes I gave birth to Medina when I was staying with Moses Mulyanti..."*

15 At another point (page 142 ROA) Nakato testifies that

"Yes I produced Median before getting Moses..."

The trial Judge (page 167 ROA) resolved this mystery by finding that Nakato by finding that

20 *"...According to Section 3 of the Succession Act it is apparent that Medina and Nakato Yudaya do not qualify as dependents because Median is not in any way a daughter of the late Moses Mulyanti and Nakato is not a wife of the deceased..."*

We agree. In any event the trial Judge also correctly found that the time of the petition for Letters of Administration it was not declared that the late Mr. Moses Mulyanti left behind a widow and it was declared that he died without any
25 children.

We shall now turn to the position of the law and establish the positions of a lawful and or bonafide occupant on the one hand and a licensee on the other. Section 29 of the Land Act gives the meaning of a lawful and bonafide occupant of land as follows;

5 “...

“Lawful occupant” means—

(a) a person occupying land by virtue of the repealed—

(i) Busuulu and Envujjo Law of 1928;

(ii) Toro Landlord and Tenant Law of 1937;

10 *(iii) Ankole Landlord and Tenant Law of 1937;*

(b) A person who entered the land with the consent of the registered Owner, and includes a purchaser; or

15 *(c) A person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title.*

(2) “Bona fide occupant” means a person who before the coming into force of the Constitution—

(a) Had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve

20 *Years or more; or*

(b) had been settled on land by the Government or an agent of the Government, which may include a local authority.

...”

Furthermore Section 29 (5) of the Land Act provides that



“... (5) Any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant under this section shall be taken to be a bona fide occupant for the purposes of this Act...”

In the case of **Kampala City Council and Anor V National Housing and Construction Corporation** CA 02 of 2004 (SC) Justice Odoki (CJ as he then was) held that a bonafide occupant is one who not only occupied land but also utilized it for more than twelve years before the coming into force of the 1995 Constitution.

In the further case of **Kampala District Land Board and Anor V Venansio Babweyaka and 3 Ors** CA 2 of 2007 (SC) again Justice Odoki (CJ as he then was) also held that the interest of a bona fide occupant could not be granted or transferred to a third party without providing them the protection provided for in the Land Act.

Section 29 (4) of the Land Act defines what the effect of a licence is and provides:

“... (4) For the avoidance of doubt, a person on land on the basis of a licence from the registered owner shall not be taken to be a lawful or bona fide occupant under this section...”

In **Thomas V Sorrell 124 ER 1098**, a license was defined as permission, express or implied given by the land owner to another to enter his land for a specified purpose which would otherwise have constituted a trespass. It need not be formally executed and its termination may also be informally done. The essence of a license is permission.



In **Rajwani v Degamwala [1950] EACA 37**, the court explained that in establishing whether the relationship amounted to a lease or licence regard must be had to the substance of the agreement. If the effect of the instrument was to give the holder an exclusive right, then it is a lease. If it is merely for the use of the property in a certain way and in certain terms while it remains in the possession and control of the owner, it is a licence.

In the case of **Pius Okello Umoni & 5 Others V Obbo Christopher Civil Suit No. 86 of 1999 HC Mbale**, the plaintiffs claimed to be bona fide customary occupants of land unchallenged from about 1959 or 1960 by the registered owner until he died in 1984. The defendant was son to the registered owner who took up letters of administration and defended the suit. **Muhanguzi J** (as he then was) found that the first plaintiff had been allowed to occupy the land by the defendant's father during his life time. For this matter the plaintiff was on the suit land on the basis of a licence from the defendant's father who was the registered owner of the suit land. According to section 29(4) of the land Act the plaintiff is neither a lawful nor a bonafide occupant of the land. A person who occupies land on the basis of a licence from the registered owner shall not be taken to be a lawful or bonafide occupant. The Court further found that the defendant was therefore entitled to evict the plaintiffs as trespassers because they have failed to prove any interest they claim and the defendants notice to them to quit the suit land issued on 31st January 1998 terminated the licence earlier given to plaintiff by the defendant's father around 1959 or 1960. As such from the date of the notice to quit the suit land the plaintiffs became trespassers and the defendant in law became entitled to evict them from the suit land. The plaintiffs had not proved the custom under which they derived their alleged customary tenure. By virtue of a grant of letters



of administration from the high court, the defendant has every right of a registered owner of the land in relation to the land registered in the names of his late father.

It would appear to us that to determine the status of the Appellants, it is
5 important to have clarity on how and when they came to be on the suit land. It is quite clear from the evidence on record that the suit land with the main house on it belonged to the late Mr. Besweri Mulyanti and he sold it ultimately vesting his ownership in the late Mr. Basil Bataringaya. Any interest that the late Besweri Mulyanti had in the suit land was extinguished for valuable consideration. What
10 remained was to hand over suit land. The proverbial saying that you cannot have your cake and eat it at the same time is applicable here. Indeed this sale may not at the beginning have pleased Besweri's son the late Mr. Moses Mulyanti who was already on the land and further unsuccessfully challenged the said sale. At the end of the day the trial Judge found and we have no reason to fault his finding
15 that Moses Mulyanti and Basil Bataringaya entered an arrangement whereby Moses Mulyanti was allowed to remain on the land as a caretaker. This was nothing more than permission to stay on the land and care take. This trial Judge found made Moses Mulyanti a licensee. Under Section 29 (4) the Late Moses Mulyanti as licensee was not a lawful and bonafide occupant who could pass on
20 his interest to anybody else. This licensee was subject to termination. The objection to the termination of the said license by the late Moses Mulyanti's relatives (who became the Administrators of his estate since he left no wife or children) as found by the trial Judge was misconceived. They failed to discharge the evidential onus that they were lawful and or bonafide occupants of the suit
25 land. In any event after the death of Moses Mulyanti there was no other Mulyanti



left on the suit land and Nakato had no independent legal right to be on the suit land without Moses Mulyanti. We further agree with the finding of the trial Judge that the continued stay on suit land by the late Moses Mulyanti as caretaker was because the wife of Bataringaya had been killed during Amin's regime 1971-1979 leaving behind very young children who are the respondents herein. It appears that the late Mulyanti took advantage of this situation to try and claim ownership of the said property but this was resolved in Miscellaneous Cause 7 of 1970.

Ground three and four

The learned trial Judge erred in law and fact when he held that the plaintiffs were not entitled to the remedies and reliefs sought and

The learned trial Judge erred in law when he held that the defendants were entitled to vacant possession to the suit land and to evict the occupants.

The findings we have made in the preceding grounds would ordinarily have put this appeal to rest. However Counsel for the Appellants made an alternative argument as to the issue of compensation which we would like to address.

The Appellants' submissions

Counsel for the Appellant's submitted that the trial Judge did not order the respondents to compensate the appellants for their developments on the suit land and therefore was not guided by Article 237 Clauses 8 of the Constitution and Section 32 of the Land Act.

He further submitted that the Appellants were evicted from the land and the developments on the suit land were demolished by the Respondents. He argued

that since the Appellants could not be restated on the suit land because it would tantamount to ejecting the registered proprietor and therefore he sought the remedy of compensation.

He relied on the case of **Fredrick Zaabwe Vs. Orient Bank** CA No 04 of 2006 (SC)
5 for the proposition that where the an appellant has lost his entitlement to utilization or occupation of the suit land then he is entitled to adequate compensation for his interest and developments on the land.

Counsel for the respondents' submissions

Counsel for the Respondents supported the decision of the trial Judge to order for
10 vacant possession by the occupants of the land since they were not part of the Mulyanti family.

He argued that Nakato and Medina were squatters but not dependents or beneficiaries to the estate of the late Moses Mulyanti. He further submitted that vacant possession was already obtained for the most of the eight acres of the suit
15 land and it was only a balance 0.35 acres that was in contention.

Counsel further supported the trial court's decision not to award any special damages and punitive damages because there was no evidence to quantify the said damages and prove them.

Counsel for the Respondents further submitted that the appellants failed to show
20 justification for compensation.

Court's findings and decision

We have already found that the Appellants are not lawful and bona fide occupants of the suit land. The Appellants in their Complaint among other things had prayed for special damages for damage to the Residential house (para 6 for Ug shs 10,000,000/=) and yet it was not theirs in the first place. The said house had
5 been sold by the late Mr. Besweri Mulyanti together with the suit land in 1968 for valuable consideration. The first Appellant in his testimony (page 129 ROA) agrees that the house was built by Besweri Mulyanti in the "1940-1950s". The Second Appellant also testified (page 136 ROA) that the said house was sold in 1968. The house therefore belonged to the Respondents as beneficiaries of the buyer. As to
10 the damage to the other semi-permanent houses (para of the Complaint valued at Ugx shs 8,000,000/=), it is common ground that they were built by the late Mr. Moses Mulyanti but the value of the damage to the buildings was not specifically proved in court as required by law. These semi-houses were for workers said to be Bedo Tenywa and one Frank (no second name page 153 ROA). All we know is that the
15 semi-permanent houses were made of mud and wattle walls with roughcast external finish with old iron sheets on eucalyptus poles, no ceiling and a floor of compacted soil (see report page 84 ROA). As to the prayer (c) in the Memorandum of Appeal that the Respondents compensate the Appellant's for the current market value of their interests in the suit land this was the prayer in
20 the Complaint. We therefore find that the appellants are not entitled to any compensation.

Final Decision

This appeal fails on all grounds and we accordingly dismiss it with costs here and at the High court.

Dated at Kampala this 2nd day of July, 2019.

HON MR. JUSTICE KENNETH KAKURU JA

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HON MR. JUSTICE GEOFFREY KIRYABWIRE JA

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HON MR. JUSTICE CHRISTOPHER MADRAMA JA