THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 199 OF 2016

(Arising from H.C.C.S No. 037 of 2010 at Fort Portal, Judgment of Batema, J dated 14.04.2016, itself arising from Fort Portal Chief Magistrate's Court Civil Suit No. 56 of 2003 (Original Kabarole District Land Tribunal Claim No. 56 of 2003)

1. IRUMBA ROGERS KAIJA

2. IRUMBA PAUL ::::::::::::::::::::::::::::::::::APPELLANTS

VERSUS

RICHARD TOORO :::::::::::::::::::::: :::::::::::::: RESPONDENT

CORAM: Hon. Justice Geoffrey Kiryabwire, JA

Hon. Justice Monica Mugenyi, JA

Hon. Justice Remmy Kasule, Ag. JA

JUDGMENT OF HON JUSTICE REMMY KASULE, AG. JA

Background

The Respondent filed a suit against the Appellants and the late Kaija Hassanali Oliver in the Kabarole District Land Tribunal for trespass on the suit land situate at Rwengoma A, Rwengoma Ward, Fort Portal Municipality. The Respondent claimed that he bought it from Oliver

Kaija and one Wawa and prayed for a declaration that he was the owner of the suit land.

The Appellants denied the trespass and contended that the Respondent surveyed the land in excess of what was allocated to him by the controlling authority. They counter-claimed that the suit land belongs to the second Appellant.

In 2006, when the Land Tribunal ceased to operate, the suit was heard by the Magistrate Grade1, Fort Portal. Judgment was delivered by that Court in favour of the Appellants against the Respondent.

The Respondent, dissatisfied with the decision, appealed to the High Court, Fort Portal (Batema, J). The High Court, Fort Portal, allowed the Appeal. The appellants were dissatisfied, hence this appeal.

Grounds of Appeal

The grounds of appeal are:

"1. That the Learned Judge on appeal erred in law when he failed to properly re-evaluate the evidence on record which showed that the Appellants who were in possession for a very long time are lawful occupants on the suit land and any allocation of the suit land to the Respondent without determining the Appellants' interest was unlawful.

2. That the Learned Judge on appeal erred in law when he held that the Appellants had no legal or equitable interest in the suit land.

3. ***That the Learned Judge on appeal erred in law when he found that the suit land is a wetland and decreed it to the respondent.***
4. ***That the Learned Judge on Appeal erred in law in holding that the Respondent had followed the lawful procedures in acquiring the suit land which was a complete departure from the Respondent's pleadings whose case was that he purchased it from Oliver Kaija and Wawa.***
5. ***That the learned Judge erred in law when he failed to re-evaluate the evidence on record in regard to the land allegedly allocated to the Respondent and the land in dispute between the parties and consequently decreed to the Respondent land belonging to the Appellants.***
6. ***That the learned Judge on appeal erred in law when he granted the Respondent excessive general damages and other remedies in regard to the registration of the suit land.***

Legal Representation

Richard Bwiruka, Advocate, was for the Appellants, while Wyne Rwamukama holding brief for Rwakatooke was Advocate for the Respondent. Both Appellants and Respondent were present in Court.

Submissions

Both Counsel filed and adopted written submissions for the respective parties. Grounds 1, 2 and 5 were argued together, and grounds 3, 4 and 6 separately.

Grounds 1, 2 and 5

Submissions for the Appellants

The effect of these grounds according to Appellants' Counsel is to fault the Appellate Judge for holding, as a matter of law, that the Appellants were not lawful occupants and had no legal or equitable interest in the suit land.

Counsel for the Appellants argued that the Judge on appeal failed to properly evaluate the evidence and thus erred in law when he failed to distinguish between Wawa's land, which the said Wawa allegedly sold to the Respondent, and the suit land which belongs to the Appellants.

The evidence of the second Appellant (DW1) was that the suit land was acquired by DW1's late father Paul Kaija Kwamya who died in 1970. He tendered in Court, as evidence, tenancy agreements entered into with Fort Portal Municipal Council collectively as Exhibit DE1 and receipts for payment of ground rent as DE2. He (Dw1) was through the said Exhibits DE1 and DE2, thus recognised as an occupant of the suit land by the Controlling Authority.

It is the case for the Appellants that whereas the Respondent contended that he bought the suit land from Oliver Kaija and Wawa,

the Respondent provided no proof of the said purchase. The evidence was that Wawa was a village mate to the Appellants and son of Afuderi but never owned any part of the suit land.

Wawa's land, according to Appellants' Counsel, was shown by the evidence adduced at trial, to be just neighbouring that of the Appellants. Therefore, if Wawa sold any land, he must have sold that land, which was neighbouring the suit land, but not the suit land itself, which did not belong to him.

The Respondent had no sale agreement tendered in evidence to show that he bought the suit land from Oliver Kaija and Wawa. He merely claimed that he lawfully acquired the suit land through an application to Fort Portal Municipal Council in 1993. If this claim of ownership by the Respondent would not defeat the legitimate customary and/or bonafide occupancy and/or user interests of the Appellants in the suit land; since their occupancy and long use of the same, had existed before the suit land was allocated to the Respondent.

Learned Counsel for the Appellants prayed for grounds 1,2 and 5 to be allowed.

Submissions for the Respondent

Respondent's Counsel submitted, in respect of grounds 1,2 and 5, that as a matter of law, the Appellants never occupied and owned the disputed land. The land was under the ownership of the Controlling Authority which gave permission to tenants to grow seasonal crops

on the same and only on temporary basis. The Appellants could not have been, in law, the owners of the suit land because there was a laid out procedure for one to acquire land under the Land Reform Decree. The Appellants had not adduced evidence of their having complied with that procedure.

On the part of the Respondents, Respondent's Counsel submitted, that there was compliance with the law. The Respondent had lodged and pursued an application for the said land with Fort Portal Municipal Council, he had also complied with the NEMA requirements and such compliance had proceeded to apply for a licence to set up and operate a camp site.

Accordingly, the Judge on appeal was not at all in error in law to hold as he did in favour of the Respondent. Grounds 1, 2 and 5 therefore had no merit. They ought to be disallowed. Learned Respondent's Counsel prayed so.

Resolution of grounds 1, 2 and 5

Duty of a Second Appellate Court

It is necessary to re-state this duty to be carried out by this Court, as a second Appellate Court, while resolving these and other grounds of this appeal. This is a second appeal. The duty of a second Appellate Court is provided for by *Section 72 of the Civil Procedure Act.*

It provides;

72. Second appeal.

(1) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that—

(a) The decision is contrary to law or to some usage having the force of law;

(b) The decision has failed to determine some material issue of law or usage having the force of law;

(c) A substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

The effect of this provision is to restrict second appeals to be on matters of law only.

Therefore, the duty of a second appellate court is, as a matter of law, to examine whether the principles which a first appellate court should have applied were properly applied and if not, then for this second appellate Court to proceed and apply the said principles as a matter of law. The second appellate Court has also the duty to resolve, whether the first appellate Court, properly appreciated the

evidence on record and whether or not that first appellate Court came to the right conclusions on that evidence.

To this effect Rule 32(2) of the Court of Appeal Rules provides that:

"**32. General Powers of the Court.**

(1).....

(2) On any second appeal from a decision of the High Court acting in the exercise of its appellate jurisdiction, the Court shall have power to appraise the inferences of fact drawn by the trial Court, but shall not have discretion to hear additional evidence."

In ***Areet Sam Vs Uganda: Supreme Court Criminal Appeal No. 20 of 2005,*** the Court elaborated that:

"...as a second Appellate Court we are not expected to re-evaluate the evidence or question the concurrent findings of facts by the High Court and Court of Appeal. However, where it is shown that they did not evaluate or re-evaluate the evidence or where they are proved manifestly wrong on findings of fact, the Court is obliged to do so and to ensure that justice is properly and truly served."

In resolving grounds 1, 2 and 5, the appreciation of the evidence adduced at trial shows that Pw2 was from 1975 to 1986, a town agent for Rwengoma Parish within Fort Portal Municipality where the suit land is situate and the suit land had no owner other than the Fort

Portal Municipal Council. The Council permitted people to use the land for cultivation and among these people was Pw6.

Eucalyptus trees were planted on the land.

Pw3 testified that he was a senior town agent for Rwengoma in Fort Portal Municipality from 1977 to 1986 when he left the Municipal Council Service. According to Pw3, no body occupied the suit land up to 1986 when he left the service.

The Respondent (PW4) testified that the suit land is bordered by a water supply station on one side, while Mpanga and Mugunu River is on the lower side. The suit land bordered with the land of Pastor Dickson on the other side with that of Bright Youngman on the upper side. In 1993, the suit land was a wetland under the control and management of Fort Portal Municipal Council. He (Pw4) applied for the land and was granted the same under minute 11(s) of 1992. An allocation was made to him. He compensated the people who had been cultivating on the same.

PW6 testified that he used to cultivate on the suit land up to 1994 when one Olive Kaija, the then LC1 Chairperson, told him and other users, that the land had been allocated to the Respondent by the Municipal Council.

The Defendants (now Appellants) who were originally three before the third Defendant passed on, called three witnesses at trial. Dw1, a retired Police Officer and brother to the late Olive Kaija, testified that the Respondent trespassed on his land found in Rwengoma A. He

had acquired the land from his father who died in 1970. The said land, about 3 acres, is bordered by Pastor Dickson on the left, then by River Mugunu to River Mpanga on the south and by Bright Youngman's land on the right. The boundaries were as a result of a survey by the Fort Portal Municipal Council.

In 1993, the Respondent encroached on 60 meters of the suit land on the side of Pastor Dickson, according to Dw1. There were Buramura trees, mogorogoro and motoma trees separating the Respondent from DW1's land. DW1 tendered in Court Exhibits DE1 and DE2, being expired annual tenancy agreements and receipts for payment of annual rent for Rwengoma Plot 576, the suit land.

He testified further that the Respondent encroached on his land to the size of about 100 yards by 20 yards. Dw1 was then cultivating maize and potatoes on this land. It is when he went to mark the boundaries of his land, that the Respondent chased him away with a panga. Dw1 reported the matter to Fort Portal Police Station.

DW1 explained that the tenancy agreements Exhibit DE1 were renewed every year. The tenancy was given for seasonal crops. He last paid for the land in 1975.He was renting from Fort Portal Municipal Council. His late father had customarily occupied the land until 1970 when he died. Dw1, then succeeded the land until 1970 when he died. Dw1, then succeeded to his father and so acquired the customary interest in the land.

DW2 testified that he has a home in Rwengoma village where the Respondent's land is situated. The disputed land is about three (3)

acres in a V-form from the home of Bright Youngman to the inter-section of River Mpanga and River Mugunu where there is a mutooma tree. The upper side boarders with their land. Dw2 explained that this land is their customary land having been owned by his grandfather and that he had stayed thereon for the last 38 years. The Respondent trespassed onto the same by cultivating potatoes thereon. DW2 had learnt that a one Kuku was compensated by the Respondent. But Kuku did not own the disputed land.

Dw3 testified that he knows the disputed land as having belonged to Paul Irumba, father to the 1st Appellant and brother to Oliver Kaija.

I have carefully considered the submissions of respective Counsel on appeal, the judgments of the Appellate Judge of the High Court, the submissions and proceedings in the first appeal as well as the Judgment and proceedings before the Trial Grade 1 Magistrate Court, Fort Portal.

On the Court record, there is a receipt for payment of rent by Irumba Paul, the second Appellant, for the year 1993 dated 16/4/1993 and a later receipt by the Respondent dated 5/11/1993.

The evidence of the Respondent was that he applied for the land from Fort Portal Municipal Council on 7/6/1992 and his application was approved before visiting the land. When the Respondent later visited the land, he was led to Oliver who took him to the land and showed him some people who had gardens on the said land.

The above evidence shows that the Respondent was allocated the land by the Fort Portal Municipal Council before ascertaining what was on the said land. This evidence contradicts that of Pw5 who testified that before the Respondent (Pw1), applied for the land, there was no one in occupation of the suit land. Pw5 also testified that the Housing Committee of the Municipal Council went to inspect the land around March 1993. There were no people at the inspection. He acknowledged that there were trees on the land but that he did not bother to establish the owner of those trees because he regarded their presence on the suit land as an encroachment on the said land.

The trial Magistrate was therefore right for holding that the purpose of inspection of a piece of land, before the Controlling Authority grants any lease or other permission to use that land, is to establish if there any other persons with interest in that the land that may be affected by the grant. The Trial Magistrate Court visited the locus of the disputed land and found that the land did not border with any water supply station, as the Respondent had stated in his testimony. The Trial Magistrate Court concluded that the Appellants proved their interest in the suit land by production of Exhibits DE1 and DE2 being annual tenancy agreements and receipts for payment of rent to Fort Portal Municipal Council.

The Learned Appellate Judge however held that;

> ***"In accordance with the above provision (section 5 of the Land Reform Decree), the respondents continued to occupy the suit land by free temporary licence valid from year to***

year and had no equitable interest claim to the suit land. Former customary owners became tenants at sufferance."

With due respect, I do not agree with the Appellate Judge's finding, Article 237(1) and (3)(a) of the Constitution, the Supreme law of the land, vests in the citizen ownership of land under the prescribed land tenure, including that of customary ownership. The Appellants proved their interest in the suit land through customary ownership, as well as through recognized tenancy as proved by their annual tenancy agreements and receipts for rent payment to Fort Portal Municipality Council.

Equitable interest in land also covers an interest held in land which has not been registered such as tenancy by occupancy. See: ***Kampala District Land Board Vs Venansio Babweyaka and 3 others S.C.C.A No. 2 of 2007,*** Their Lordships in that case, after expressing themselves on the issue of equitable interest, went on to observe, on the facts of that case, that: ***"the respondents were not informed of the 2nd appellant's interest in leasing the land and given an option to lease the land or to make any representation to protect their interest when it was clear that the suit land was occupied by the respondents for a long time....."***

Likewise in this case, Fort Portal Municipal Council ought to have first acknowledged the interests of the Appellants in this land. The Municipal Council ought to have given the right to a lease grant to the Appellants, having been occupants on the suit land before anyone else, like the Respondent. The Learned Appellate Judge, with respect,

erred in law when he did not hold so. I therefore, allow grounds 1, 2 and 5 of the appeal.

Ground 3

Appellant's submissions

Counsel for the Appellants submitted that there was no evidence indicating that the suit land was a wetland and therefore belonging to the Government. A witness No.2, Kisembo Emmanuel, PP 168-171, and PP 269-273 of the Record of Appeal, presented a map drawn in 1966 marked Exhibit A/W/II showing that the area in dispute was a wetland but was drained and was no longer a swamp. The fact that the same land was leased to the Respondent is proof that the land is not a wetland.

Learned Counsel prayed Court to allow ground 3.

Respondent's Submissions

For the Respondent, it was contended that the Appellate Judge rightly found that the suit land was a wetland and held in favour of the Respondent who applied for a license by NEMA to operate a camp site and bird sanctuary activities, not destructive to the wetland.

Counsel prayed for dismissal of ground 3.

Resolution of ground 3

The evidence of witness 2: Kisembo Emmanuel, PP 168-171 and 269-273 of the Record of Appeal during the cross examination was that he went to the ground and found some temporary structures on

raised soil on the suit land. Features of a wetland had been interrupted and the suit land was drained. He testified that it was no longer a swamp.

The effect of this evidence was that the land that was originally a swamp had been actually drained and was no longer a swamp. That explains why the Municipal Council, the Controlling Authority, was granting a lease over the suit land.

However, the Appellate Judge found and held that;

> *"Thus, the trial Magistrate erred in holding that the respondents were customary owners of the suit land as the suit land is a wetland which belongs to the Government and within an urban area."*

I respectfully disagree with this finding. If the suit and is in fact a wetland, then neither the Appellants nor the Respondents would have a right to it. Likewise, Fort Portal Municipal Council would not have given a lease grant to the Respondent on the same land, being a wetland. There was also no evidence that the Appellants, as the first users of the land, were ever required by the Controlling Authority to use the land for purposes of a wetland, and they failed to do so. The Controlling Authority, Fort Portal Municipal Council, and the Respondent, as Applicant for the suit land, ought to have acknowledged the interest of the Appellants as the first users/occupiers of the suit land, before taking any decision of allocating the said suit land to the Respondent. The Learned Appellate Judge was therefore wrong in law to hold as he did.

Ground 3 is also resolved in the affirmative.

Ground 4

Submissions for Appellants

This ground faulted the Appellate Judge for having held that the Respondent followed the lawful procedure under the law in acquiring the suit land, when in fact, in his pleadings, the Respondent claimed that he bought the suit land from Oliver Kaija and Wawa.

Relying on **Uganda Breweries Ltd Vs Uganda Railways Corporation, SCCA No. 6 of 2001,** where the Supreme Court held that a party should not depart from his/her previous pleadings in presenting and proving that party's case to Court, Appellants' Counsel submitted that the Respondent had acted to the contrary. The Respondent had not pleaded in his plaint in the Chief Magistrate Court, Fort Portal, Civil Suit No. 56 of 2003, originally Kabarole District Land Tribunal Claim No. 56 of 2003, that he had acquired the suit land through a process of applying for the same from Fort Portal Municipal Council. He had instead pleaded that he had bought the suit land from Oliver Kaija and Wawa.

The Appellate Judge therefore ought to have found the Respondent's case unreliable and then rejected the same by reason of what was pleaded being different from what was adduced as evidence by the Respondent. Ground 4 therefore should also be allowed, learned Appellants' Counsel so submitted.

Submissions for the Respondent

Counsel for the Respondent, on the other hand, maintained that the Judge on appeal, committed no error at all in holding as he did. Counsel reasoned that the Respondent originally lodged his claim in the Kabarole District Land Tribunal by filling in a Claims Form, as prescribed by Rule 11(2) of The Land Tribunals Procedure Rules, 2002. These Rules had been enacted under the Land Act, 1998. This Form did not provide space for elaborate statements of facts giving rise to the cause of action, as would be the case in an ordinary plaint.

Accordingly, there was no departure from the Respondent's pleading. The Respondent from the very beginning had stated on Oath, that Oliver Kaija and Wawa, were, amongst other people, whom the Respondent compensated for their crops on the suit land. There was therefore no ambush of the Appellants by the Respondent's case at the hearing. This is because the evidence on record as to the Respondent's acquisition of an equitable interest in the suit land from Oliver Kaija and Wawa and subsequent application for legal interest from Fort Portal Municipal Council was very clear on the Court record.

Respondent's Learned Counsel prayed Court to dismiss ground 4 as being without merit.

Resolution of ground 4

On 16/10/2003, the Respondent lodged a Land Claim No. 56 of 2003 with Kabarole District Land Tribunal. The Respondent was the Applicant/Plaintiff and the Appellants together with Kaija Oliver were the Respondents/Defendants to the land claim. The Respondent sought, as against the Appellants, a declaration that he was the lawful owner, occupier and user of the suit land, a permanent injunction to stop them from using the suit land, general damages for trespass and costs of the suit.

The Respondent stated in paragraph 12 of the Claim Form that he had come to occupy and own the land: **"By Purchase from Oliver Kaija and Wawa".** In paragraph 15 he pleaded:

"15. Reasons for the application. Land dispute, the respondents without claim of right trespassed.....on my land".

In their written statement of defence and counter claim filed in the Kabarole District Land Tribunal on 24/10/2003, the Appellants, then defendants, averred in Para 2thereof that: **"(a) There was no purchase of the defendant's land by the claimants.**

(b) The land belongs to the 3rd defendant under Customary Tenure".

The Kabarole District Land Tribunal claim No. 56 of 2003 is what became the Chief Magistrate's Court Fort Portal Civil Suit No. 56 of 2003.

In his evidence at trial, the Respondent as Plaintiff testified that: (page 35 paragraph 3: Record of Appeal)

"I asked for this land from Fort Portal Municipal Council then on 7/6/1993 the Land and Housing sub-committee, Fort Portal approved my application, and the land was allocated to me."

It also came out clearly in the evidence that whatever payments the Respondent made after acquiring the land which was about 3.6 acres in acreage and was already surveyed, was by way of compensation to those who had grown seasonal crops on the said land before he acquired the same.

However, about 3 years later, after having acquired the land stated above, the Respondent claimed to have bought 1½ acres of land from Oliver Kaija. At page 47 (bottom paragraph) of the Record of Appeal, the Respondent is recorded as having testified that:

".....There are 2 pieces of land. 1st allocated by Town Council, adjacent land was sold to me by Olive Kaija. Land allocated to me by Town Council was 3.6 acres. Land was surveyed. Land bought from Oliver Kaija was not surveyed about 1½ acres. Those lands are adjacent to each other. Kaija was chairperson L.C.1 of the area".

I find merit in the submission of Counsel for the Appellants. The Respondent specifically pleaded that he had acquired the land, the subject of the dispute he was lodging in the Tribunal, and later in the Chief Magistrate's Court, Fort Portal, by purchase of the same from

Oliver Kaija and Wawa. This pleading was very different from what the Respondent testified to in the trial Court that he had applied for the said land from Fort Portal Municipal Council and had then paid compensation to those who had seasonal crops on the said land.

As to any purchase of the same land from Oliver Kaija, this was long after the Respondent had acquired the suit land from Fort Portal Municipal Council. It was a different piece of land, about 1½ acres, which was not surveyed and adjacent to the suit land.

Nowhere in his evidence, did the Respondent claim to have bought the suit land from Wawa. All that the Respondent asserted was that Wawa, was amongst some of those he compensated for some seasonal crops on the suit land.

The contradictory versions from the Respondent as to how he acquired the suit land, the one pleaded in his pleadings being contradictory to the one he testified to on oath in Court, renders the Respondent's case as to how he acquired the suit land to be inconsistent and less credible.

By way of contrast, the version of the Appellants as to their interest in the suit land remained consistent and credible, the one pleaded in their written statement of defence being the same supported by evidence that they adduced at trial. At any rate it was contrary to law for the Respondent to depart from his pleadings. See: **Uganda Breweries Ltd Vs Uganda Railways Corporation (supra).** The Appellate Judge thus erred in law to hold as he did. Ground 4 stands allowed.

Ground 6

Submissions for the Appellants

Counsel for the Appellants contended that Ug.Shs. 12,000,000/= general damages awarded to the Respondent by the Appellate Judge was excessive. The Respondent had not adduced any evidence at trial of inconvenience caused to him. The Court injunctions issued by Court were to preserve the status quo of the suit land until the civil suit in Court had been disposed of. All parties to the suit were restrained from interfering with the disputed land pending final determination by the Court.

Accordingly, the award of damages and the amount assessed were excessive and unjustified.

Appellants' Counsel relied on the case of **Robert Coussens Vs Attorney General: SCCA No.8 of 1999**, as to the principles that govern the assessment and award of general damages and prayed for ground 6 to be allowed. Appellants' Counsel finally prayed that all the Appellants' grounds of appeal being successful, the whole appeal ought to be allowed with costs to the Appellants.

Submissions for the Respondent

Learned Respondent's Counsel maintained that the award of Ug.Shs.12,000,000/= general damages was justified, given the circumstances of the case.

The Respondent had suffered much from the Appellants' acts with regard to the suit land. The Appellants had lodged a caveat on the

suit land so as to prevent the Respondent's acquisition and occupancy of the suit land. Yet the Respondent had already paid relevant dues and fees for the acquisition and use of the suit land for a camp site and bird sanctuary. The trespass of the Appellants on the suit land hindered free use of the entire disputed land by the Respondent who had already secured the requisite license from NEMA.

The Appellate Judge, Respondent's Counsel maintained, properly awarded the sum of Ug.Shs.12,000,000/= general damages to the Respondent and there was no miscarriage of justice caused to the Appellants. Accordingly ground 6 had to be dismissed.

Counsel for the Respondent then prayed that, all the grounds of appeal having failed, the whole appeal had also to be dismissed with costs to him.

Resolution of ground 6.

The Appellate Judge awarded damages to the then Appellant, now the Respondent in this appeal, of Ug.Shs.12,000,000/= general damages for inconvenience by protracted litigation, including injunctions, for over twelve years, mental and psychological torture.

The position of the law is that general damages are compensatory in nature for the injury or loss suffered.

The economic inconvenience suffered, the nature and extent of the injury, loss or breach and the value of the subject matter are some of

the factors that the Court may consider in assessing the damages. See: **Robert Coussens Vs Attorney General: SCCA No.8 of 1999.**

As already held, the Appellate Judge erred in law in holding that the Appellants had no interest at all in the suit land. It follows therefore that the Appellate Judge equally erred in law when he set aside the award of general damages of Ug.Shs.5,000,000/= that the Trial Magistrate had awarded to the Appellants.

The Appellate Judge did not also avail any reason as to why he found Ug.Shs.5,000,000/= awarded as general damages by the Trial Magistrate to the Appellants, to be an inadequate amount and assessed Ug.Shs.12,000,000/= as the damages for the Respondent. On the basis of the above reasons, with respect, the Learned Appellate Judge, was wrong in law. I accordingly allow ground 6 of the appeal.

Having allowed all the grounds, I allow this appeal, I set aside the Judgment and orders of the Learned Appellate Judge. The same is substituted with the Judgment of the Magistrate Grade 1 delivered on 19/06/2010 in Chief Magistrate's Court, Fort Portal Civil Suit No. 56 of 2003. I would award on the general damages awarded in that judgment of the Grade 1 Magistrate, interest at the Court rate from the date of the judgment of 19/6/2010 till payment in full.

As to costs, I award the Appellants the costs of this appeal and those in the Courts below. The costs shall also carry interest at the Court rate.

Dated this 19th **day of** July **2021**

Hon. Justice Remmy Kasule, Ag. JA

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 199 OF 2016

1. IRUMBA ROGERS KAIJA
2. IRUMBA PAUL } ========== **APPELLANTS**

VERSUS

RICHARD TOORO ========== RESPONDENT

(An appeal from the decision of the High Court of Uganda at Fort Portal before Batema, J. dated the 14th day of May, 2016 in Civil Appeal No.037 of 2010)

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

HON. LADY JUSTICE MONICA MUGENYI, J.A.

HON. MR. JUSTICE REMMY KASULE, Ag. J.A.

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

I have had the opportunity of reading the draft Judgment of the Hon. Mr. Justice Remmy Kasule, Ag. J.A.

I agree with his Judgment and I have nothing to add. Since the Hon. Lady Justice Monica Mugenyi, J.A. also agrees, we hereby order that:-

1. The Appeal is allowed.
2. The Judgment and Orders of the learned Appellate Judge are hereby set aside and substituted with the Judgment and Orders of the Magistrate Grade 1 in Civil Suit No. 56 of 2003.
3. Interest, at the Court rate, is awarded on the general damages awarded in the Judgment of the Magistrate Grade 1, from the date of the judgment of 19th June 2010 till payment in full.
4. The costs of this Appeal and those in the Courts below are awarded to the Appellants.
5. Interest, at the Court rate, is hereby awarded on the costs.

It is so ordered.

Dated at **Kampala** this ..... day of .....2021.

.....

HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CORAM: KIRYABWIRE AND MUGENYI, JJA AND KASULE, AG. JA

CIVIL APPEAL NO. 199 OF 2016

BETWEEN

1. **ROGERS KAIJA IRUMBA**
2. **PAUL IRUMBA** ..... **APPELLANTS**

AND

RICHARD TOORO ..... **RESPONDENT**

(Appeal from the Judgment of the High Court of Uganda at Fort Portal (Batema, J) in Civil Suit No. 37 of 2010)

JUDGMENT OF MONICA K. MUGENYI, JA

I have had the benefit of reading in draft the lead Judgment of Hon. Justice Remmy Kasule, Ag. JA in this Appeal. I agree with the decision arrived at and the orders therein, and have nothing useful to add.

Dated and delivered at Kampala this 23rd day of Aug, 2021.

Hon. Lady Justice Monica K. Mugenyi

JUSTICE OF APPEAL