

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)**

**HCCS NO. 188 OF 2001**

**TOKO SAVERIO**

**t/a SUPERIOR HIGH SCHOOL:..... PLAINTIFF**

**VERSUS**

**SSEKAKINDA ELLY NSEREKO:..... DEFENDANT**

**BEFORE: THE HON. LADY JUSTICE M.S. ARACH - AMOKO**

**JUDGMENT**

The Plaintiff, Saverio Toko filed this suit against the Defendant for the recovery of general and exemplary damages for unlawful interference with his licence to run Superior High School located at Kitintale, in Kampala, a permanent injunction restraining the Defendant from representing himself as the owner and/or director of superior High School, an account of the profits made by the Defendant, interest, and costs of the suit.

The brief background to the case is that, on 9/9/99 the Plaintiff registered a school business as a sole proprietor under the name and style of Superior High School. He then obtained a licence to operate the school from the Ministry of Education for a period of one year from 27<sup>th</sup> August 1999 to 27<sup>th</sup> August 2000. The Plaintiff also

applied for registration of the school to the Ministry of Education as required by sections 25 and 26 of the Education Act. He set up a management team, recruited staff and students and

operated the school until January 2001 when the Defendant took over the school from him. The Plaintiff alleges that the Defendant's act of taking over the school was illegal, without any justification and consideration whatsoever and amounted to an unlawful interference with his licence; since he never sold, donated, transferred or otherwise parted with proprietorship or consented to the Defendant being appointed director of the school; or the in-charge of management. The Plaintiff also alleges that as a result of the Defendant's illegal and wrongful act, he the schools business and goodwill have been disrupted and he has lost the benefit, reputation and connection he had established as a school. He has also suffered loss and damage in that the Defendant has prevented him from running the school business. Teachers and students have left the school. His school property including furniture, laboratory equipment, computers, typewriters and kitchenware have been misappropriated by the Defendant. Hence this suit.

In his written statement of Defence, the Defendant denied the allegations and contended basically that by the time he took over the school in January 2001, it was no longer operational as its licence had expired on 27/8/2000. The Defendant also denied misappropriating the Plaintiff's properties as alleged in the plaint and maintained that if the Plaintiff suffered any loss, then it was the direct result of his mismanagement of the school and failure to pay rent to the land lord who finally evicted him from the school premises. The suit should therefore be dismissed with costs.

The following facts were agreed upon at the scheduling conference:

1. The school called Superior High School registered by the Plaintiff.
2. The Defendant has taken it over and is running the school.

The following issues were agreed on for determination by Court:

1. Whether the Defendant wrongly interfered with the Defendant's licence.

2. If so, whether the Plaintiff suffered any loss.
3. Whether the Plaintiff is entitled to the remedies in (i), (ii), (iii), (iv), (v), (vi) and (vii).

In a bid to prove his case against the Defendant, the Plaintiff called Mr. Ntalo Mohammed, the Deputy Head Master of the school at the material time (PW2), apart from his own testimony.

The Defendant called two other witnesses, Mr. Tokoma Caesar, the Landlord (DW2) and Mr. Richard Musisi Bagenda, a teacher at the school (DW3).

Turning to the issues framed, I shall deal with them seriatim. The first issue is whether the Defendant wrongly interfered with the Plaintiff's licence. It is common ground that the Plaintiff registered a business called Superior High School on 9/9/99. The certificate of Registration and the statement of particulars were tendered as Exhibit 'P'. Thereafter, the Plaintiff applied and was granted permission by the then Ministry of Education to establish and operate on licence Superior High School by a letter from the then Commissioner for Education, Mr. Stephen B. Maloba dated 5/11/1999 (Exhibit P2) where he stated in the relevant part that:

*"I have the pleasure to inform you that you have been granted ONE YEAR permission to operate on licence in the above named school in accordance with sect/on 22/23 of Education Act 197. This is effective from 27/8/99 to 27/8/2000."*

This was in line with section 24 of the Education Act which provides that:

*“24. Permission to operate a new school shall be given, in the first instance, in the form of a license to operate a provisionally classified school for one school year.”*

Section 25 (1) of the Act provides that:

*“25. (1) After one school year, an application for the classification of the provisionally licensed school shall be made in writing to the Chief Education Officer and shall contain the following particulars:-*

- a. the name of the school owner;*
- b. the type and range of education proposed to be provided in the school;*
- c. the classes, standards or forms to be provided in the school;*
- d. the staff list and their qualifications.”*

Section 26 provides that:-

*“26. If, after one school year, the Chief Education Officer is satisfied -*

- a. that the school provisionally licensed is properly run and organised, then he or she shall issue a certificate of registration and classification;*
- b. that all or any of the conditions set up under this Act have not been fulfilled, he or she may -*
  - (i) extend the provisional license for a further period not exceeding one school year; or*

(ii) *order the school to be closed.*”

The Plaintiff testified that after getting the licence, he set up the school management, recruited staff and by the end of 2000 he had enrolled 213 students in both boarding and day school. He also bought desks (for students and teachers) chairs, laboratory equipment, kitchenware, textbooks and stationary for the school.

The licence was expiring in August 2000, so he made an application for registration on 20<sup>th</sup> June that same year. Ministry of Education Officials inspected the school.

Exhibit P3 is the application for registration dated 20/6/2000 by the Plaintiff.

It is entitled “APPLICATION FOR REGISTRATION AND CLASSIFICATION OF A PROVISORILY LICENCED PRIVATE EDUCATIONAL INSTITUTION” It is a form of the Ministry of Education. The Application is the Plaintiff in his capacity of school owner/proprietor. The application is in respect of Superior High School. The application has four sections endorsed by the:

1. District Inspector of Schools Kampala City Council on 11/7/2000.
2. The District Education Officer, Kampala City Council dated 17/07/2000.
3. The Commissioner for Education on 16/8/2001 and
4. Approved by the Permanent Secretary, Ministry of Education and Sports. The school was eventually registered on 16/8/2001 under Registration No. PSS/S/172. The Registration Certificate is attached to (Exhibit P3). On the basis of this evidence and the Plaintiff’s oral testimony, counsel for the Plaintiff has submitted and I agree with him that the Plaintiff was lawfully operating the said school when the Defendant took it over. The registration was in progress. I do not agree with the submission by the Defence counsel that the school was not operational by the time the Defendant took it over.

All the evidence on record points to the fact that the school had closed for 3<sup>rd</sup> term holiday. The Plaintiff was preparing to open the school for 1<sup>st</sup> term of 2001, when the Defendant took it over. It is true that the Plaintiff had rent arrears for the school premises, but that was the problem between the Plaintiff and the landlord and not the Defendant. He had no right to take

over the school the way he did. It amounted to interfere in the Plaintiff's business and the Plaintiff is right to complain.

Counsel for the Defendant submitted that the suit is based on a tort of interfering with the contractual relations and that there was no such relation between the Plaintiff and the landlord by the time his client took over the school. With much due respect, the plaint is clear, in paragraph 3, it talks of "unlawful interference with the licence of Superior High School" and not with the tenancy between the Plaintiff and Mr. Tokoma, the landlord. The issue of the tenancy should not be confused with the issue of unlawful interference with the Plaintiff's business, which is a separate tort.

It is also not disputed that the Defendant took over the school in January 2001. This is clear from the evidence of all the witnesses. The Plaintiff testified that he is no longer running the school. This is because the Defendant has taken it over. He described how the Defendant went to his house on 19/1/2001 at Kajansi and told him that he had been following the development at the school with interest and wanted them to run it as a partnership. He refused. The Defendant returned on 21/1/2001 at about 6 p.m. and insisted on the same idea. Again the Plaintiff refused. To his surprise however, when he went to the school in the 3<sup>rd</sup> week of January that year, he was informed by the then Headmaster Mr. Ntalo Hussein (PW2) that some people had held a meeting in one of the classrooms in the school, chaired by Mr. Nsereko (the Defendant) and he had told the meeting that the management of the school had changed and he was the new Director of the school. The Plaintiff tendered a copy of the circular issued to parents announcing the change as Exhibit P4. The Defendant had even sacked some teachers at the meeting and appointed new ones. Teachers were unhappy and some of them left the school. The students did not report. Exhibit P4 is on the letter-head of Superior High School. It is dated 17/1/2001, and it was signed by the Defendant. It says in the last paragraph as that:

*"The purpose of this letter is to inform you that the management of the school has changed. You are invited for a meeting so that you know more about the changes in our school. The meeting will take place on Sunday at 2p.m."*

The Defendant lied when he denied that he signed this letter. This is because Mr. Ntalo (PW2) with whom he worked closely corroborated the Plaintiff's testimony when he said the Defendant actually issued this circular and gave him a copy. He also lied when he stated that he did not take over the school business. That he only took over the premises. This is because no other registration certificate was produced in this Court. Instead the evidence pointed to the fact that the Defendant was running the school in the same name. His school, Global High School was registered as a business name on 27<sup>th</sup> September 2001. (Exhibit P5). No provisional licence was adduced in Court in respect of that school. This proves the Plaintiff's contention that the Defendant was running the school in the name of his business - Superior High School. By his own admission, the Defendant stated that he did not have a certificate of registration when he took over the school.

The Defendant further told lies during cross-examination when he stated that the Plaintiff had agreed to work with him as a partner. His actions indicated the contrary and corroborated the Plaintiff's evidence where he maintained throughout the proceedings that he never entered into a partnership or appointed the Defendant as a Director to take over the business.

The Plaintiff further testified that as the wrangle continued, his lawyers wrote to the Defendant to stop messing the school management, but he did not respond. The Plaintiff stated that he delivered a second letter to the Defendant personally on 1/3/2001 but the Defendant ignored it and told the Plaintiff that he had nothing to do with him any more. Even after all this, the Plaintiff told Court that the Defendant again followed him up to the taxi stage near his home and tried to persuade him to drop the case and instead enter into a partnership deed to run the school with him. The Defendant also apologised and told him that he was misled by some of the teachers. The Plaintiff maintained his position and advised the Defendant to see his lawyers from then onwards concerning the school. He did not sell his interest to the Defendant. He did not agree to work with him as a partner nor did he consent to his appointment as a Director of the school.

Mr. Ntalo (PW2) corroborated the Plaintiff's testimony. He told Court that is the one who processed the application for registration. He also told Court how the DEO inspected the

school on 17/7/2000. He stated that the Ministry of Education Officials allowed them to operate while the process of registration was going on.

He told Court how one Musisi an MDD Instructor in the school introduced to him the Defendant during the 3' term holidays as a "gentleman by the names of Nsereko who owns a printer on Nasser Road. He would like to become a shareholder in Superior High School." He also told Court how the Defendant organised and chaired the meeting of parents and teachers on 21/1/2000 in the school premises. PW2 said he attended the said meeting where they discussed the change of management and ownership from the Plaintiff to the Defendant. The Plaintiff did not attend the meeting. He told Court that he is the one who took a copy of the letter (Exhibit P4) to the Plaintiff. That when he asked the Plaintiff, the Plaintiff denied that he had sold the school to the Defendant. That after the 28/1/2001, there was chaos at the school. Some students and teachers left because of the chaos. The Defendant took over the management of the school together with school property including furniture, laboratory equipment, computers, typewriters and kitchen utensils. The students were still using the same uniform.

The Defendant on his part told Court that he was introduced to the Plaintiff by his cousin Musisi who was a teacher in the school upon his request because he wanted to find out from the Plaintiff why he had failed to run the school and pay rent, teachers and some suppliers. He admitted that he went to the Plaintiff's home, had a 'friendly chat' and the Plaintiff told him that he needed a partner to help him run the school. The Plaintiff also told him that he had debts. They did not resolve anything that day; so he went back after three days, this time with the purpose of striking a deal or a partnership. This time the Plaintiff told him that the rent was in arrears of Shs.3 - 4m; and that he had arrears of teachers' salary and had failed to pay some suppliers of firewood and school equipment. The Plaintiff told him that the landlord was Mr. Caesar Tokoma (DW 2) and that he feared to meet him since he had threatened to evict him (Plaintiff). They resolved that the Defendant should meet the landlord and persuade him to give back the building because he had already shown the Plaintiff the exit. The landlord refused. He then went ahead and took over the school. Mr. Tokoma (DW2) and Mr. Musisi (DW3) both confirmed this.



It is therefore clear from the documentary and oral testimony of the Plaintiff and PW2 that by the time the Defendant took over, or interfered with the school business, the Plaintiff was lawfully running the school. The evidence on record shows that the Ministry of Education officials had inspected and approved the school and the Plaintiff was in the process of registering the school after year licence had expired. On that basis alone, I answer the first issue in the affirmative.

Issues number two and three are dealt with together. From the evidence on record, it is clear that the Plaintiff suffered loss and damages as a result of the Defendant's actions. He lost the income from the school after the Defendant took over management. He also lost property because he was not given an opportunity to remove them from the school premises. He is unemployed now. He has prayed for the following remedies:

i. General damages for unlawful interference with the licence, loss of business and good will. Counsel for the Plaintiff submitted that a Plaintiff who suffers damage due to the wrongful act of the Defendant must be put in the position he would have been had he not suffered the wrong. He relied on the case of **Dr Denis Lwamafa — Vs- Attorney General** (1992) KLR 21. He proposed Shs.30m as general damages under this item. While I agree with the holding in the case cited, I do not agree with the sum proposed by counsel. It is too high and without any basis. The Plaintiff himself testified that he made an average profit of Shs.2, 360- per term and Shs.7, 080- in 1999. In 2000 he made a net profit of Shs.10, 320-. This figure was however not supported by any documentary evidence such as Audited books of accounts of the school. It is accordingly unreliable. In the circumstances, and doing the best I can, I award the Plaintiff Shs.5m only under this item.

ii. Exemplary damages.

Counsel for the Plaintiff also submitted that the Plaintiff is entitled to exemplary damages because the Defendant took over the school without the Plaintiff's consent. I agree with him. The Defendant should have registered his own school instead of ousting the Plaintiff in the manner described by the Plaintiff. His conduct was to say the least, arbitrary, and oppressive. Exemplary damages are not meant to enrich the Plaintiff but to punish the Defendant for his wrongful conduct. See: **Ongom & Anor —Vs- Attorney General** (1979) HCB 267. I accordingly award the Plaintiff Shs.1m under this item.

iii. Permanent injunction, this was issued by this Court on the 17/10/2001. The Plaintiff was also ordered to remove the signpost from the main road.

iv. Account of profits.

This order would be made in vain knowing very well the accounting practices of our businessmen. The Plaintiff himself did not produce any books of Account in this Court. I don't think the Defendant is in any better position. To make such an order would therefore not only be prolonging this dispute, but it would not yield any positive results, in my view. I therefore decline to issue the order prayed for under this item for that reason.

v. Interest — the Plaintiff is entitled to interest on the items under (i) and (ii) at 8% p.a. from the day of Judgment till payment in full.

In the result I enter Judgment in favour of the Plaintiff as follows:

1. Shs.5m general damages.
2. Shs.lm exemplary damages.
3. Interest on (1) and (2) at 8% p.a. from date of Judgment till payment in full.
4. The Plaintiff is also awarded the costs of the suit.

M.S. Arach - Amoko

**JUDGE**

Judgment delivered in Court in the presence of:

1. Mr. Toko Saverio.
2. Mr. Okuni - Court clerk.

**Absent:**

Defendant and counsel.

Plaintiff's counsel.

NB: Matter was cause listed.

M.S. Arach — Amoko

**JUDGE**

20/5/2004