

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 343 OF 2002

ZENA MUHAMMED NEE ZENA
SAMUSUDIN PLAINTIFF

VERSUS

DR. SIMON SSENTUMBWE DEFENDANT

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGEMENT:

The plaintiff brought this action through her attorney, against the defendant for the value of land comprised in Kibanja Block 12 Plot 609 Rubaga Road Kampala. The background is that there were two adjacent plots 608 and 609 the former having a residential house that protruded into the latter. When the defendant purchased plot 608 and went about clearing it for a prime development he truncated the part of the building and latrine that lay in his way. He offered the plaintiff only shs 550,000= which the plaintiff rejected, as according to him, his development was valued in excess of shs 9 million. This dispute arose due to this issue essentially, though in the end, questions were to be asked about Land tenure and the title of the plaintiff to any compensation. The defendant thus denied liability contending that the plaintiff by virtue of the protruded structure he was a trespasser. When the matter came up for trial however, the issue framed was one of compensation. Eventually each side called his own surveyor to

testify. The plaintiff's attorney and the defendant also gave evidence. Mr Babumba Kyeyune, a seasoned valuation surveyor, told this court as follows:-

"I proceeded to carry out the inspection on 19/12/2001 in the afternoon... we were not to verify land ownership only bibanja interest. I concluded that the value of compensation including 30% disturbance was shs 9.3 million."

In cross examination he stated:-

"The building was partly on plot 608 and partly on Bakulumpagis land... The extent of encroachment is about 5 metres; length of the house is about 13 metres. ...The 5 metres of building was his development. There was also a pit latrine of his on plot 609. There was also a store block... I did give a value to the pit latrine shs 400,000/=, store block was shs 330,000/=. The building was 5.2 million. These figures are before depreciation which I put at 30%. I came to shs 5,980,000 before depreciation for the building. I would not change my valuation due to injurious affection. Demolition of part of the building will damage the user of the building."

On the other hand, Mr Nicholas Sali another valuer, gave evidence for the defendant. He put the value

"at shs 1,400,000 for two room tenement block at shs 1.250,000 and for a dilapidated store at the rear at shs 150,000."

In cross-examination however the expert witness conceded that he did not measure the plot. He said:-

“I saw the 2 – roomed building and the store. The building appeared to have been partly demolished. I did not value that part as it was not there I was not told that part of the property was on plot 609... I cannot say it was partial or full.”

He also told court that he did not provide for disturbance allowance nor had he been told that the purpose of his valuation was to determine a compensation claim. He did not value a mango tree on the property and did not see my effect on the building by the demolition despite that he noticed a missing part.

The defendant in his testimony conceded to having demolished part of the plaintiff’s house that protruded into his newly acquired plot.

From the evidence the essence of the case is that the two adjoining plots belonged to a family. When they were distinctly separated by a survey it happened that the building on the land covered an area such that a small part of it lay on a different plot. Once this plot was sold by a Mortgagee the defendant was constrained to develop it and did so after destroying what he saw as a menace. The plaintiff also played the stubborn Kibanja holder and was unwilling to accept a mere shs 500,000/=. I was not impressed by the defendant’s efforts if any to resolve the plaintiffs claim yet he went ahead to attack the integrity of the plaintiff’s house with little care.

In considering the matter I have come to agree with the valuation of Mr Babumba Kyeyune as it is more specific on compensation and presented the picture of the building before its partial though substantially dissipating

demolition, as well as the effect of the demolition taking into account a disturbance element. I would accordingly say that the plaintiff would be entitled to compensation from the defendant in the sum of shs 1,000,000/= for the demolished part of his house, and shs 400,000/= for the pit latrine. Since the plaintiff lost the use of the space where the building stood he lost land usufruct value which was valued at shs 3,000,000, which I would discount to shs 1,500,000/=. The total sum would thus be shs 2.9 million. A disturbance allowance was put at shs 2 million which would also be discounted to shs 1 million. In consequence I enter Judgment for the plaintiff against the defendant for shs 3.9 million (three million nine hundred thousand only) with costs.

R.O. Okumu Wengi

JUDGE

5/7/2004.

8/7/2004

Mbogo for Plaintiff

Plaintiff's Attorney in Court

Defendant present

Senabulya Court Clerk.

Ruling read in open court in presence of all parties.

Sgd by: R.O. Okumu Wengi

JUDGE

8/7/2004.