

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 197 OF 1992**

**TOM BWETE:..... PLAINTIFF**

**VERSUS**

**UGANDA CONSOLIDATED PROPERTIES  
& WAMIKO CONSTRUCTION CO. LTD. } DEFENDANTS**

**BEFORE HON. MR. JUSTICE GIDEON TINYINONDI**

**JUDGMENT:-**

In this consolidated suits (HCCS. No. 688/92 and HCCS No. 197/1992) the Plaintiff claimed as follows: -

- “1. The Plaintiff’s address for purpose of this suit is C/o M/s Tumusiime, Kabega & Co. Advocates P. O. Box 21382, Kampala, and the Plaintiff is an adult of sound mind resident in Kololo.
  
2. The Defendants are companies with Limited Liability registered and carrying on business in Uganda. The

Plaintiff's Counsel undertake to serve the Defendants with process.

3. The Plaintiff's claim against the Defendants jointly and severally is for a declaration that he is the lawful owner of the property comprised in Leasehold Register Vol. 342 Folio 6A/B Plot 6 Hill Lane, Kololo and for orders that: -

(i) The purported sale of the said property by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant was fraudulent void and of no effect and;

(ii) The Registrar of Titles be notified by canceling therefrom the names of the 2<sup>nd</sup> Defendant and substituting therefore the name of the Plaintiff.

4. The facts giving rise to the cause of action are as follows: -

(i) In August, 1989 the Plaintiff lawfully bought the said property from the 1<sup>st</sup> Defendant having been given the first option to purchase

because he was physically occupying or residing at the said residence. Giving a first option of purchase to the occupier and still is the established policy of the 1<sup>st</sup> Defendant.

(ii) The said property was sold by the 1<sup>st</sup> Defendant to the Plaintiff at an agreed price of UShs.80,000,000/= (Uganda Shillings Eighty Million only) out of which the Plaintiff paid UShs.75,000,000/= (Uganda Shillings Seventy five Million only). Photocopies of the letters giving the Plaintiff the first option and acknowledging receipt of the said sum of UShs.75,000,000/= are attached hereto as Annexure "A" and "B" respectively.

(iii) At the time when the said payment was made, the 1<sup>st</sup> Defendant's Officials orally told the Plaintiff that the details regarding the formal transfer of the property into his names would

be communicated to him in due course when he would also be required to pay the balance of the purchase price.

- (iv) The Plaintiff contacted the 1<sup>st</sup> Defendant several times about the formal transfer and was informed that the matter was being handled and that he should not worry as the house was as good as his.
  
- (v) Sometime in August 1991, the Plaintiff received a letter dated 12<sup>th</sup> August 1991, a photocopy of which is attached as Annexure "C". The said letter written by the 1<sup>st</sup> Defendant's Ag. Manager advised the Plaintiff that the property was being put up for sale to a highest bidder.
  
- (vi) On receipt of the said letter, the Plaintiff went to see the said Ag. Manager of the 1<sup>st</sup>

Defendant whom he reminded that the house had in fact been sold to him and he had paid a substantial portion of the purchase price but he could not immediately trace the evidence of the said sale. The Plaintiff further requested the said Ag. Manager to check the records of the 1<sup>st</sup> Defendant wherein he would find the said evidence.

(vii) In an effort to preserve his interest in the property, the Plaintiff responded to the invitation to bid by making a conditional bid to buy his property. The bid was conditional on his failing to trace evidence of the prior sale. The conditional offer is attached as Annexure "D".

(viii) Sometime in November 1991, some officials of the 2<sup>nd</sup> Defendant visited the said property where the Plaintiff has at all material times

continued to stay, they examined the property and stated to the Plaintiff that they were doing so with a view to purchasing the same from the 1<sup>st</sup> Defendant.

(ix) The Plaintiff told the said officials of the 2<sup>nd</sup> Defendant that the house was his as he had purchased it from the 1<sup>st</sup> Defendant and it could not be available for sale.

(x) Sometime at the beginning of March 1992 the Plaintiff received a telephone communication from an official of the 2<sup>nd</sup> Defendant stating that the 2<sup>nd</sup> Defendant had bought the property and that it was desirous of occupying it.

(xi) On making further inquiries, the Plaintiff confirmed that the said property had been sold and transferred by the 1<sup>st</sup> Defendant to

the 2<sup>nd</sup> Defendant. A photocopy of the instruments of transfer and the Certificate of title are attached as Annexure "E" collectively.

5. The Plaintiff avers that the said sale of the property is fraudulent made mala fide, and executed with full knowledge by the Defendant of the Plaintiff's unregistered interest in the property and with intention to deprive him of the said interest and is therefore null and void.

#### **PARTICULARS OF FRAUD**

- (a) Purporting to sell and buy the property knowing fully well that that the same had been sold to the Plaintiff.
- (b) Executing a transfer of the said property with intention of depriving the Plaintiff of his interest in it.

- (c) Failing (by the 1<sup>st</sup> Defendant) to notify the Plaintiff of the pending sale or to do everything possible to assure him the option to stay in the property.
  - (d) Failing to process the transfer through all the lawful procedures and rushing the registration of the property into the 2<sup>nd</sup> Defendant's names contrary to law and procedure so as to defeat the Plaintiff's interest.
6. The Plaintiff shall contend that the sale and transfer of the property by the 1<sup>st</sup> Defendant into the names of the 2<sup>nd</sup> Defendant was done illegally and was therefore ineffective to vest a good title and that the illegality was contrived to defeat the Plaintiff's interest.
7. The Plaintiff shall further aver that between March and April 1992, the 1<sup>st</sup> Defendant illegally instructed Super



Star Auctioneers to evict the Plaintiff whereupon the said Auctioneers together with Policemen acting on illegal instructions of the 1<sup>st</sup> Defendant and the 1<sup>st</sup> Defendant's agents entered upon the said land, trespassed on it and attempted to forcefully evict the Plaintiff and his family, damaged and destroyed the Plaintiff's property valued at UShs.202,135,000/=, assaulted him and his family and illegally arrested the Plaintiff and took him to Kiira Road Police Station where he was detained for over five hours. A list of the Plaintiff's property destroyed and damaged during the eviction is hereto attached as Annexure "F".

8. The Plaintiff shall also aver that that in spite of the numerous warnings to the Defendants refused to oblige and instead incited the Auctioneers and the Police to go ahead with the eviction promising to indemnify them against any liability that may arise therefrom. See Annexure "F", "G", "H", "I", "J", "K" and "L" promising the Auctioneers indemnify and warning the Defendants of the dangers of illegally evicting the Plaintiff.

9. In or about July 1994 while the Plaintiff was away the Defendants issued further illegal instructions to the Auctioneers who came and evicted the Plaintiff from the house, destroyed his property worth Shs.57,000,000/= and damaged the house itself, threw some of the property by the roadside and dumped some at Jinja Road Police Station. The Plaintiff shall aver that this eviction was carried out in spite of the Defendant's failure to secure an injunction against the Plaintiff. See a copy of ruling as Annex "I".
  
10. The Plaintiff shall aver that by reason of the Defendants high handed actions, he suffered humiliation, embarrassment, and was denied quiet enjoyment of the property from the time he was evicted to-date, he was put at a big expense of renting another house and buying new property.

11. By reason of the foregoing, the Plaintiff has sustained loss and damage for which he seeks special and general damages.

**PARTICULARS OF SPECIAL DAMAGES**

- (a) Value of the Plaintiff's stolen, destroyed and damaged property by the Defendants totaling UShs.202,135,000/=.
  - (b) Expenses of renting another house from the time of eviction to-date.
12. Notice of Intention to Sue was given to the Defendants.
  13. The cause of action arose in Kampala within the jurisdiction of this Honourable Court."

WHEREFORE the Plaintiff prays for Judgment against both Defendants jointly and severally for: -

- (a) A declaration that he is the lawful owner of the property comprised in LHR Vol. 324 Folio 6A/B Plot 8 Hill Lane, Kololo.
- (b) An Order canceling the purported sale of the said property by the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant.
- (c) An Order rectifying the Registrar of Titles by canceling from Certificate of Title to the said property the names of the 2<sup>nd</sup> Defendant and substitute therefore the names of the Plaintiff.
- (d) Alternatively an Order against the 1<sup>st</sup> Defendant to repay the equivalent in real value of UShs. 75,000,000/= at the time of repayment plus interest at 45% per annum from 1989 till the date of payment.
- (e) Special damages as per paragraph 11 above.

- (f) General damages for breach of contract of sale by the 1<sup>st</sup> Defendant plus interest thereon at 45% per annum from date of Judgment till payment.
- (g) Aggravated damages
- (h) Costs
- (i) Any other relief Court may deem necessary in the circumstances of this case.”

In its written statement of defence the 1<sup>st</sup> Defendant pleaded:

- “1. Paragraphs 1 and 2 of the plaint are admitted save that the address for service of the First Defendant is C/o Turyakira & Co. Advocates, Plot 3/5 Bombo Road P. O. Box 30624, Kampala.
2. No admission or at all is made as to the allegations contained in paragraph 3 and it is specifically denied that the Plaintiff is the owner lawful or otherwise of the

property comprised in Leasehold Register Volume 342 Folio 6A/B, Plot 6 Hill lane Kololo or at all; or that he is entitled to all or any of the orders set out therein.

3. Save that the First Defendant admits writing annexure C to the plaint, and executing the transfer of the suit property into the names of the Second Defendant, the 1<sup>st</sup> Defendant denies each and every allegation of fact contained in paragraph 4 of the plaint.
4. In further answer to paragraph 4 of the plaint, it is specifically denied that: -
  - (a) The Plaintiff lawfully or otherwise bought the property in dispute or was ever given a first option to purchase in 1989 or at any other time.
  - (b) The said property was sold or at all to the Plaintiff at the alleged sum of Shs.80,000,000/= or at all and that the Plaintiff made a payment to the 1<sup>st</sup>

Defendant of Shs.75,000,000/= or at all and that annexures A and B are genuine documents written by the 1<sup>st</sup> Defendant or its general manager or at all.

- (c) The 1<sup>st</sup> Defendant or its officials orally or otherwise promised to transfer the said property or that the property was as good as the Plaintiff's and accordingly paragraph 4 (iii) and (iv) are denied.
  - (d) The Plaintiff ever made to the 1<sup>st</sup> Defendant the said or any conditional offer for the property or that the alleged conditional offer was ever received by the 1<sup>st</sup> Defendant and accordingly paragraph 4(vi) and (vii) is denied and the Plaintiff shall be put to strict proof thereof.
5. It is denied that the sale of property by the 1<sup>st</sup> Defendant to the second defendant was fraudulent, mala fides or intended to deprive the Plaintiff of his alleged interest in

the property which alleged interest was in any case non existent and paragraph 5 is accordingly denied together with all the alleged particulars of fraud which the Plaintiff will be put to strict proof thereof.

6. Paragraph 7 of the plaint is denied and it is particularly contended that the sale to the 2<sup>nd</sup> Defendant was not illegal, or that it was intended to defeat the Plaintiff's interest or at all as the Plaintiff had no such interest in the said property.
7. Paragraph 7 of the plaint is denied and the 1<sup>st</sup> Defendant denies that its servants or agents trespassed on the suit property or at all or assaulted, or arrested the Plaintiff or at all, or that they damaged or destroyed the Plaintiff's alleged property or any party thereof or at all and the contents of annexure E are accordingly not admitted.
8. Save that the 1<sup>st</sup> Defendant wrote annexure "G" no admission whatsoever is made as to the contents of



paragraphs 8, 9 and 10 of the plaint which are denied and, in particular, it is denied that the Plaintiff's property or any part thereof was thrown or dumped by the road or at Jinja Road Police Station or that property worth Shs.57,000,000/= or any value at all destroyed or at all.

9. The 1<sup>st</sup> Defendant shall, in further answer to paragraph 8, 9 and 10 contend that it is Shining Star Motors Uganda Ltd of which the Plaintiff was Managing Director which was legally evicted by the 1<sup>st</sup> Defendant after the Plaintiff had failed to secure an injunction against the Defendants as contained in the ruling of Tsekoko J attached hereto and marked annexure A.
  
10. Paragraph 11 and 12 of the amended plaint is denied and in particular it is denied that the 1<sup>st</sup> Defendant humiliated or embarrassed the Plaintiff or at all or that the Plaintiff suffered the alleged or any damage or loss or at all.

11. Paragraph 14 of the plaint is admitted save that it is denied that the Plaintiff is entitled to any or all the remedies set out in the prayer therein.
  
12. Alternatively but without prejudice to the foregoing, the 1<sup>st</sup> Defendant shall by way of preliminary objection contend that the suit is misconceived and not maintainable by the Plaintiff and shall apply for it to be dismissed or struck out with costs.
  
13. Save as is hereinabove specifically admitted, every allegation of fact in the plaint is denied as if the same were set forth herein and specifically traversed.

1. THE OFFICIAL RECEIVER  
UGANDA CONSOLIDATED  
PROPERTIES LTD. ....: PLAINTIFF

VERSUS

<ol style="list-style-type: none"> <li>1. SHINING STAR MOTORS (U) LTD</li> <li>2. TOM BWETE</li> </ol>	}	DEFENDANTS
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**COUNTERCLAIM**

14. The 1<sup>st</sup> Defendant repeats paragraphs 1 to 11 above and counterclaims against the Plaintiff for an order requiring the Plaintiff to indemnify the 1<sup>st</sup> Defendant against all losses and liability the 1<sup>st</sup> Defendant may incur to the 2<sup>nd</sup> Defendant consequent on the Plaintiff's refusal and delay to let the 2<sup>nd</sup> Defendant into possession of the said premises, and general damages.
  
15. The 1<sup>st</sup> Defendant avers that as owners of the premises comprised in Leasehold Register Volume 342, Folio 6A/B and known as Plot 6 Hill Lane decided to dispose of he said property by sale and duly notified M/s Shining Star Tours and Travel Ltd. which was occupying the same as 1<sup>st</sup> Defendant's tenant and of which the Plaintiff was Managing Director, of this fact by letter dated August 12, 1001 annexed to the plaint herein as annexure C thereto.
  
16. Another Company, Shining Star Motors Uganda Ltd. (hereinafter called the Company) of which the Plaintiff

was also the Managing Director, duly responded by letter dated August 13<sup>th</sup> 1991 a copy of which is attached hereto as "B" accepting with regret the 1<sup>st</sup> Defendant's terms as to the sale and notice to vacate the said premises, and instead requested to be allowed to occupy another premises at Plot 9 Impala Avenue.

17. The 1<sup>st</sup> Defendant duly issued a public advertisement of the sale dated August 23<sup>rd</sup>, 1991 which advertisement was carried by the New Vision Newspaper of Tuesday, August 27<sup>th</sup>, 1991 a copy whereof will be produced at the trial hereof.
18. By its letter dated August 27<sup>th</sup> 1991, a copy whereof is attached as annexure D1 the company offered unconditionally to buy the said premises at a cost of Shs. 165 millions, which offer the company subsequently confirmed unconditionally by another letter dated September 2<sup>nd</sup>, 1991 a copy whereof is attached hereto and marked D2.

19. By a subsequent letter dated October 1<sup>st</sup> 1991, a copy whereof is attached hereto as annexure D3, the Plaintiff raised his unconditional offer to buy the said premises to Shs.170 millions, which offer was accepted by the 1<sup>st</sup> Defendant on condition that the purchase price was paid within three weeks from November 4<sup>th</sup> 1991 as per photocopy of letter to that effect attached hereto as annexure D4.
  
20. The company by its letter dated November 13<sup>th</sup>, 1991 a copy of which is attached hereto as D5 acknowledged receipt of the 1<sup>st</sup> Defendant's letter and prayed for more time within which to pay which prayer was rejected by the 1<sup>st</sup> Defendant through the letter dated November 19<sup>th</sup>, 1991, attached hereto ad D6.
  
21. The 1<sup>st</sup> Defendant avers that after further correspondence contained in the company's two letters dated November 25<sup>th</sup>, 1991 and January 12<sup>th</sup> 1992 respectively, the 1<sup>st</sup> Defendant formally notified the

company that the company's offer had lapsed and the 2<sup>nd</sup> Defendant's offer had been accepted and the 2<sup>nd</sup> Defendant had accordingly bought the premises from the 1<sup>st</sup> Defendant. Copies of these letters are attached hereto as D7 and D8.

22. The 1<sup>st</sup> Defendant avers that it has in the premises duly and legally sold and transferred the said premises to the 2<sup>nd</sup> Defendant who are now the Registered Proprietors thereof as per annexure E to the plaint herein.
  
23. The 1<sup>st</sup> Defendant avers that the said company through the Plaintiff has stubbornly refused and delayed to vacate the suit premises so as to enable the 1<sup>st</sup> Defendant to give vacant possession thereof to the 2<sup>nd</sup> Defendant as a result of which the 1<sup>st</sup> Defendant's contract with the 2<sup>nd</sup> Defendant is likely to be breached thereby resulting in loss and damage to the 1<sup>st</sup> Defendant for which the 1<sup>st</sup> Defendant claims

indemnification from the Plaintiff in the heed sit and the company to the said full loss.

24. The 1<sup>st</sup> Defendant claims from the company general damages for trespass as it is contended that in the circumstances, the company and its Managing Director, the Plaintiff are trespassers on the said premises.”

WHEREFORE, it is prayed that the Plaintiff’s suit be dismissed with costs and judgment be entered against the company and the Plaintiff in the head suit for the 1<sup>st</sup> Defendant on the counterclaim for: -

- (a) an order that the company and the Plaintiff in the head suit shall indemnify he 1<sup>st</sup> Defendant against all losses and liability the 1<sup>st</sup> Defendant may incur to the 2<sup>nd</sup> Defendant by virtue of the Plaintiff’s refusal or delay to hand over possession of the premises to the 1<sup>st</sup> Defendant.

- (b) General damages with interest thereon at court rate from the date of judgment till full payment.
- (c) Costs of the Counter-claim.”

The second Defendant’s written statement of defence reads: -

- “1. Save for what is expressly admitted herein, the second Defendant denies all allegations of fact contained in the amended plaint as if the same were herein set-forth and traversed seriatim.
2. The second Defendant does not deny the contents of photographs one and two of the amended plaint and adds that the second Defendant’s address of service for purposes of this suit is C/o Ngobi Ndiko Advocates, 1<sup>st</sup> Floor, Conrad House, Plot 30, Jinja Road, P. O. Box 21625, Kampala.



3. The second Defendant denies the contents of paragraph 3 the amended plaint and the Plaintiff shall be put to strict proof thereof.
4. Save for (viii) the rest of the contents of paragraph 4 of the amended plaint are not within the knowledge of the second Defendant and no admission is made thereto.
5. Paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 of the amended plaint are denied and in response thereto and to the whole claim by the Plaintiff the second Defendant avers as follows: -
  - i). That it is a bonafide purchaser for value without notice of the suit property having purchased the same from the first Defendant as the lawful owner thereof and without any incumbrances or notice of incumbrances whatsoever.

- ii). That as purchaser the second Defendant was given vacant possession of the suit premises by the first Defendant whereupon it took possession thereof.
  
- iii). That there was no fraud on its part or at all in the transaction to purchase the suit property and transferring it into its names and the facts alleged by the Plaintiff to constitute fraud do not indicate/show fraud on the second Defendant or at all and accordingly the facts in the amended plaint do not disclose a cause of action against the second Defendant or at all.
  
- iv). That it did not trespass against the Plaintiff's person or property and it is not liable to the Plaintiff or at all in respect of the suit property or its acquisition of the same or at all.

- v). That the Plaintiff has no claim against it or at all in respect of the suit property and the suit is frivolous and vexatious.
6. Save for the jurisdiction of this Honourable Court to which the second Defendant submits, the second Defendant denies that it was ever served with a notice or intention to sue and further denies that the Plaintiff is entitled to any of the reliefs sought as against it or at all.”

PW1, Tom Bwete (herein “the Plaintiff”) testified as follows: -  
He was a Director of Shining Star Motors Ltd. He resided on plot 6A Hill Lane Kololo which he occupied mid-1980 as the 1<sup>st</sup> Defendant’s tenant. In August 1989 he proposed to buy the property. On 16/08/1989 the General Manager of the 1<sup>st</sup> Defendant, Mr Mugisa, wrote exhibit “P1” replying that the 1<sup>st</sup> Defendant had decided to sell the property at plot 6A/6B for Shs. 80m/= and asked the Plaintiff if the offer was acceptable. The Plaintiff paid Shs. 75m/= against a receipt signed by

Gorora who was known to the Plaintiff. Gorora gave the Plaintiff a letter dated 25/08/1989 acknowledging the payment (exhibit "P2" and "P3"). The Plaintiff was willing to pay the balance of Shs. 5m/= whenever he got it.

The Plaintiff further testified that he thought the transfer of the property would be effected after he paid the balance of the part-payment. On 12/08/1991 he received exhibit "P4" where the General Manager stated that the 1<sup>st</sup> Defendant wanted to sell the property and was requesting the Plaintiff to allow the prospective buyers to enter the house.

On receipt of the letter the Plaintiff went to the General Manager and told him that he had already bought the house and would not let other people buy it. The Plaintiff told the General Manager that the only problem was that he had lost his documents. The General Manager told him that if he retrieved the documents he should return to him but if the Plaintiff did not the Defendant would sell, to which the Plaintiff agreed. For this record the Plaintiff filed exhibit "P5".

The Plaintiff further testified that in November 1991 three men from the 2<sup>nd</sup> Defendant came to inspect the house at 1.00 p.m. saying they were informed it was up for sale. He told them he had already bought it and they left. In December 1991 and March 1992 the 2<sup>nd</sup> Defendant went to the Plaintiff's Shining Star Motors Office and offered Shs. 30,000,000/= to the Plaintiff to withdraw the case he had filed. He refused. He contacted Ms Katende and Sempebwa, Advocates to lodge a caveat on the title. When the lawyers went to the land office for this purpose they found out that the property had already been transferred to the 2<sup>nd</sup> Defendant on 18/02/1992 (Exhibits "P6" and "P7"). He was surprised that the transfer was applied for and obtained same day. He further inquired about the shareholders of the 2<sup>nd</sup> Defendant from the Registry of Companies and found out they were non-Ugandans save two-Mulira and Wamala (Exhibit "P8"). He inquired from the Ministry of Lands if the 2<sup>nd</sup> Defendant had obtained the Minister's consent before the transfer. One Tibisaasa told him the 2<sup>nd</sup> Defendant had not.

It was against this background that the Plaintiff became convinced that the transfer had been obtained fraudulently:

- the 2<sup>nd</sup> Defendant went ahead to cause a transfer despite and after the Plaintiff told him he had already bought the property.
  
- The 2<sup>nd</sup> Defendant obtained the transfer without the Minister's consent.
  
- The 1<sup>st</sup> Defendant knew of the Plaintiff's documentary evidence of the purchase and yet went ahead to sign the transfer.
  
- The transfer was effected to defeat the Plaintiff's equitable interest.

He decided to sue to obtain the prayers in the plaint.

In cross-examination by Counsel for 1<sup>st</sup> Defendant the Plaintiff testified that he became the 1<sup>st</sup> Defendant's tenant in 1980

and last paid rent on 30/08/1992. He had accepted the terms in exhibit "P1". He was not told/given the period within which to pay. On 25/08/1989 he personally paid the Defendant's cashier in the General Manager's office and the cashier issued a receipt No. 1045. He paid in dollars but after an agreement the receipt was written for Uganda Shillings. When shown a receipt book he agreed he had seen it when the receipt was being written. The book contained serial numbers XI0.1001 - 1050. The dates on the first receipt and on the last were 26/03/1989 and 03/01/90 respectively. The foil for receipt No. 1045 was in respect of Uganda Spinning Mills and was dated 02/01/1990 (exhibit "P8").

In further cross-examination the Plaintiff testified that he received exhibit "P1" in the morning and exhibit "P3" in the evening of 25/08/1989. He did not request for and did not know when exhibit "P3" was written. He stated that he continued paying rent even after payment of Shs. 75m/= and stated that the continued payment of rent was not surprising because he did not have the outstanding balance of the part-

payment and in any case the rent was a small amount. He did not agree with the suggestions that the 1<sup>st</sup> Defendant never wrote exhibit "P3" and that the Plaintiff made it himself. In further cross-examination the Plaintiff testified that when he received exhibit "P4" on 12/08/1991 his first reaction was to go to the General Manager's office physically but not to write a letter of 13/08/1991. When he went to the General Manager's office he demanded: -

- a three months' notice.
  
- an alternative house along Impala Avenue for renting

In this letter he did not notify the 1<sup>st</sup> Defendant that he had already bought the house. He did not receive a reply to this letter. He did not know if on 27/08/1991 the property was advertised for sale.

On 02/09/1991 he wrote two letters. In one he was offering to buy the property and giving the reasons. The second



contained the amount offered - Shs. 165m/= or 170m/=.

When shown a letter dated 27/08/1991 he changed to say he wrote it before that of 02/09/1991 offering Shs. 165m/= because he had lost his documents evidencing payment.

That on 01/10/1991 he wrote another letter offering to purchase the property. That between 27/08/1991 and 01/10/1991 he did not know how many letters he wrote to the 1<sup>st</sup> Defendant. When shown a letter dated 02/09/1991 he said he wrote it to the 1<sup>st</sup> Defendant; that in fact they received it; and that he did not mention in it that he had purchased the property. He agreed that in none of the letters he wrote to the 1<sup>st</sup> Defendant did he mention this fact.

In further cross-examination of the Plaintiff, he testified that in March/April 1991 he recovered the lost documents. On 04/11/1992 the 1<sup>st</sup> Defendant accepted his offer of Shs. 170m/= to be paid within three weeks of the offer. He did not pay but went to the General Manager to tell him he had yet to marshal the money. On 13/11/1991 he wrote seeking an extension of time. He did not receive a reply. When shown a

letter of 19/11/1991 he admitted receiving a copy; he then denied he received it; yet again he admitted receiving it and stated that the 1<sup>st</sup> Defendant was refusing the extension he had asked for.

The Plaintiff was shown a letter dated 25/11/1991 and admitted he wrote it to the 1<sup>st</sup> Defendant telling he had not yet got the money and requested for yet another extension of time. He did not recall the 1<sup>st</sup> Defendant replied.

When shown a copy of a letter dated 12/01/1992 the Plaintiff stated he wrote it to the 1<sup>st</sup> Defendant offering Shs. 173m/= because the 1<sup>st</sup> Defendant's General Manager advised him so, so that the General Manager sees how to assist him. That up to 12/01/1992 he had not yet got the money but had not lodged any caveat to protect his interest in the property because he trusted the people he was dealing with. That up to 13/03/1992 he was still paying rent. On 13/03/1992 the 1<sup>st</sup> Defendant broke into the house and the Plaintiff stopped further payment.

In further cross-examination the Plaintiff denied that after the sale to the 2<sup>nd</sup> Defendant, the 1<sup>st</sup> Defendant did not notify him to vacate. However, when referred to his own affidavit sworn on 18/08/1992, paragraph 3 thereof; he admitted the 1<sup>st</sup> Defendant did notify him.

Finally in cross-examination the Plaintiff repeated that he in fact paid Shs. 75m/= to the 1<sup>st</sup> Defendant. He denied that he forged the receipt and letter acknowledging payment. He admitted he was prosecuted for forging exhibit "P3" but said the case was still pending conclusion.

When cross-examined by the 2<sup>nd</sup> Defendant's Counsel the Plaintiff testified as hereunder. He did not know anything about the Registration of Titles Act and therefore did not lodge a caveat on the property though he had paid Shs. 75m/=. He expected 1<sup>st</sup> Defendant not to sell to another party. He never looked at the Company documents of the 1<sup>st</sup> Defendant regarding shareholding. The document from which he obtained the information that the majority of the

shareholders of the 2<sup>nd</sup> Defendant were non-Ugandans was different from exhibit "P8". He did not know that a company whose majority shareholders are non-Ugandans could transfer to another whose majority shareholding was non-Ugandan without the Minister's consent. He insisted that the transfer to the 2<sup>nd</sup> Defendant required the Minister's consent.

When shown exhibit "P7" the Plaintiff testified the transfer was registered on 18/02/1992 while the revenue stamp showed 10/02/1992.

PW2, Peer Mukidi Walubiri testified as follows:

He was a Senior Registrar of Titles in the Land Office. When shown exhibit "P6" he testified that the transfer was registered on 18/02/1992 having been lodged on the same day at 2.00 p.m. The process could be said to have been quick but it was not unusual. When shown a document indicating the nationalities of the 2<sup>nd</sup> Defendant's shareholders he testified that the Minister's consent was necessary for the 1<sup>st</sup> Defendant to transfer property to the 2<sup>nd</sup>

Defendant and there was no such application on the office file.

In cross-examination by Counsel for the 1<sup>st</sup> Defendant PW2 testified that a Minister's consent is necessary when the registered proprietor is an African and is transferring to a non-African. But when the two parties are non-African the Minister's consent is not necessary. That when both parties are non-African the only consent was that of the Commissioner of Lands. When shown the 1<sup>st</sup> Defendant's articles of association, he testified the 1<sup>st</sup> Defendant was non-African. That in fact there was a copy of the application and consent by the Commissioner of Lands on the office file (exhibit "P10"). That according to the application both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were described as Ugandans and that the description was appropriate.

When cross-examined by the 2<sup>nd</sup> Defendant's Counsel, PW2 testified that he would describe the 1<sup>st</sup> Defendant as non-

African according to the shareholding and therefore requiring a Minister's consent to transfer.

PW3, Andrew Kisibagire testified as hereunder.

He was a General Manager of Shining Star Motors Ltd. in 1991. [In my considered view his short evidence was not material to this case and was in fact irrelevant. I ignore it.]

After the consolidation of the two suits, further evidence was led by the Plaintiff.

PW4, Simoni Kule testified that he was the LC Chairman Kololo II Village III where the Plaintiff resided on plot 6 Hill Lane in 1992. He stated that mid-July 1992 some auctioneers evicted the Plaintiff from the house. He was not present when they did so. When he visited the scene he found all the household properties thrown around and doors of the house broken. He asked the Plaintiff to go back into the house. The Plaintiff put back the properties into the house and repaired the doors and windows. That in July 1994 when the Plaintiff was in prison, a

second eviction took place. Again the witness did not witness this eviction. [I regard this evidence as useless to the Plaintiff's case especially on special damages because PW4 was not an eye witness].

PW5, Jabeth Kapsoma testified that:

He was a private investigator. That on 11/07/1995 the Plaintiff went to their office complaining that his house was broken into and property stolen including two motor vehicles by officials of the 2<sup>nd</sup> Defendant. The Plaintiff asked the witness to investigate and paid fees for the task. That he established that the properties were removed by the 2<sup>nd</sup> Defendant's officials as a team. That the properties were household and the motor vehicles - all dumped at Jinja Road Police Station. The storeman at the Jinja Road Police Station gave him a list of these properties. He himself did not compile one. That the eviction had not been authorized by the High Court and had in fact been stayed till completion of the civil suit between the Plaintiff and 2<sup>nd</sup> Defendant. (He referred to exhibit "P3" and "P4"). [PW5 was not exhibiting

the report he compiled for the above reason, it was pointless for the Plaintiff to call this evidence. I ignore it].

PW6, Julius Watuuro testified that:

Between 1992 to 1994 the Plaintiff employed him as a shop attendant for motor vehicle's spare parts and tyres in his Shining Star Company. That in January 1992 he resided in the Plaintiff's servant's quarters on plot 7 Hill Lane, Kololo. In July 1992 court brokers, policemen and other people came in three motor vehicles to the Plaintiff's house at 5.30 a.m. These motor vehicles had a "Wamiko Construction" writing on them. They first arrested the Plaintiff and then ordered the rest of the Plaintiff's people to vacate the house and chased them away. These evictors threw all the household properties out of the house and outside the gate. They loaded corrugated iron sheets and fridges on two tippers and took them away. After one week they called PW6 to return home. A few properties like broken chairs and beds were recovered and returned to the house. Sometime in July 1994 the court brokers returned with Police and chased the Plaintiff's people



away. They were again in “Wamiko Construction” motor vehicles. At that time the Plaintiff was in Luzira prison. The court brokers threw properties – TV, Chairs, raid cookers, beds – out of the house.

In cross-examination by Counsel for the 1<sup>st</sup> Defendant PW6 testified that at both evictions the motor vehicles he saw bore “Wamiko Construction Ltd”. The evictors did not show documents authorizing them to evict. He did not know when the Plaintiff returned from Luzira prison after the 1992 eviction.

In cross-examination by 2<sup>nd</sup> Defendant’s Counsel PW6 testified that he did not know any of the people in the three motor vehicles. He knew some of them were policemen because of their uniform. During the first eviction he was in the servant’s quarters alone while the Plaintiff, the Plaintiff’s mother, and some children were in the main house.

The Plaintiff was re-called to testify as PW7 only on: -

- a) the eviction and;
- b) destruction of his property.

He testified that on 26/03/1992 he received exhibit "P1" from the 1<sup>st</sup> Defendant, exhibit "P2" from court bailiffs, exhibit "P2" from court bailiffs exhibit "P3" dated 08/04/1992, exhibit "P4" dated 20/07/1992 and exhibit "P5". That on 14/07/1992 at 5.45 a.m. three motor vehicles (a mini-bus, pick-up and lorry) came to his house. The lorry was full of people and one armed policeman. The policeman entered the house and introduced himself to the Plaintiff saying he was from Kiira Police Station. The Policeman asked the Plaintiff to dress up and be taken to Kiira Police to answer to a case against him. He was taken and put in the cells. He had left the mini-bus and lorry and the people who came in them at his house. At 6.00 p.m. that day the police released him without any charge being told to him. When he arrived back home, he found all his property thrown out of the house across the road. A policeman was on guard and told him not to enter the house

or touch anything. The policeman told him to leave the place. He left.

On 21/07/1992 he returned to the house and took an inventory of the property destroyed. He then repaired to the Vice-President, Hon. Dr. Samson Kiseka, to report his circumstances. The Vice President gave him a policeman whom the Plaintiff went with back to the house. This policeman was to order the policemen guarding the house to leave. He did so. Thereupon the Plaintiff found that most of his property had been destroyed. Though the front doors were intact, the rear ones were damaged. Spare parts for Mercedes Benz, BMW, Corolla and Volks Wagon and corrugated iron sheets were removed from three stores. Although he owned shops in town, he kept the spare parts in the stores at home because the shops were being broken into frequently. On 14/07/1992 he compiled an inventory of the property destroyed or stolen and signed it {exhibit "P6"}. The value of the said property was Shs. 202,135,000/= (Two

hundred and two million one hundred and thirty five thousand shillings only).

At the time of computing these values he used the receipts of the purchase prices. However on 27/07/1994 when he was in Luzira prison the court brokers who came to his house looted these receipts. He had been sentenced to jail for uttering a false document in this particular case. His shop attendant (PW6) informed him about the said court brokers' looting.

The Plaintiff further testified that on 19/07/1992 he was not a trespasser on the disputed property because he had purchased it. He repeated his prayers in his amended plaint.

When cross-examined by Counsel for the 1<sup>st</sup> Defendant, the Plaintiff testified as follows:

He was not a trespasser on the plot on account of exhibit "P2", evidence of his payment. He was convicted for uttering a false document which was not exhibit "P2". He appealed against the conviction and lost the appeal. At first he was a tenant of the property and had a tenancy agreement.

With regard to the inventory of the destroyed/stolen property, it was compiled by his daughter but he signed it. The list and prices indicated thereon were not imaginary.

He was also cross-examined by the 2<sup>nd</sup> Defendant's Counsel and testified as follows. He was convicted for forging exhibit "P3". As for the inventory, the list included both new and old items. He did not indicate the quantity of the goods in item 11 of exhibit "P6" but he knew the value. He indicated on exhibit "P6" that the properties were destroyed/stolen by the 2<sup>nd</sup> Defendant because PW6 told him so. He did not have a list of the salvaged properties because they were all destroyed and looted while he was in jail.

With the above evidence the Plaintiff closed his case.

DW1, Frederick Kawesa testified as follows:

In 1991 he worked for the 1<sup>st</sup> Defendant as the Company Secretary and left it in 1997. The 1<sup>st</sup> Defendant constructed,

let out, and sold buildings. As the Company Secretary the witness was responsible for, inter alia, convening Board meetings and taking minutes, registering documents with the Registrar of Companies and looking after the register of members. During his tenure Shining Star Tour & Travel was a tenant of the 1<sup>st</sup> Defendant's house along Kololo Hill Lane. He knew the Plaintiff to be the operator of the said Shining Star Tour and Travel and used to come to DW1's office to discuss tenancy affairs. At the time he left the employment with the 1<sup>st</sup> Defendant in 1997 he did not know if Shining Star and Travel was still a tenant of the 1<sup>st</sup> Defendant's house on Kololo Hill Lane. The sale of the 1<sup>st</sup> Defendant's house on plot 6 Kololo Hill Lane was through the advertisement in the "New Vision" of 27/08/1991 which invited buyers. The property was eventually sold to the 2<sup>nd</sup> Defendant (exhibit "D1"). At the time the late Henry Mugisa was the 1<sup>st</sup> Defendant's General Manager.

Although he knew that the Plaintiff was among the Applicants, DW1 did not know that the Plaintiff had bought this property

before it was sold to the 2<sup>nd</sup> Defendant. When shown exhibit “P1”, DW1 said it was signed by the late Henry Mugisa with whom DW1 had worked and was familiar with his signature. He did not know if the said Shining Star Tour and Travel bought the house subsequent to the advert of 27/08/1991. When shown exhibit “P2”, he stated that he did not know if Bwete bought the house. After the 2<sup>nd</sup> Defendant purchased the house it became necessary to evict Shining Star Tour and Travel from the house because they were not willing to vacate peacefully even after a notice signed by DW1 (exhibit “D2”).

When referred to exhibit “P1” and “P2” the witness testified that when he wrote exhibit “D2” he was not aware of their existence. He became aware of them after the Plaintiff sued for non-delivery of the house. After the Plaintiff sued the 1<sup>st</sup> Defendant filed a written statement of defence and disputed the (authenticity) said exhibit “P1” and “P2”.

In cross-examination DW2 testified as follows:

Tom Pule Atim was DW1's assistant for more than one year. Tom Pule Atim was the one who signed exhibit "P1". When shown exhibit "P7", DW1 stated that it was a complaint about illegal eviction. The letter was from the Deputy Registrar, High Court addressed to Star Association Auctioneers and Court Bailiffs and was copied to both Defendants. The signature on exhibit "P2" looked like Mugisa's.

DW2, Gerald Sekitoleko, testified as hereunder: -

He worked as General Manager of the 1<sup>st</sup> Defendant between March 1990 to August 1992 as the Chief Executive Officer in charge of Administration, Personnel and Construction. The Plaintiff was the 1<sup>st</sup> Defendant's tenant of a house somewhere in Kololo. The house had been advertised for sale; the Plaintiff was one of the bidders as was the 2<sup>nd</sup> Defendant. When shown exhibit "P4" he said he authored it. He said exhibit "D3" was the Plaintiff's response to it. The Plaintiff made offers in exhibits "D4" and "D5". The witness accepted the Plaintiff's offer of Shs. 170m/= (exhibit "D6") and gave the Plaintiff three weeks in which to pay. The Plaintiff failed to



pay. Then the Plaintiff sought further extension (exhibit "D7").

In exhibit "D10" the 1<sup>st</sup> Defendant emphatically rejected the Plaintiff's attempt to top up the offer by Shs. 3m/=.

The witness further stated that the Plaintiff had not told the truth in his evidence that he had previously bought the house and that the Plaintiff had told him that he had lost his documents of the alleged purchase. It was not true the witness promised a refund to the Plaintiff. He had never seen exhibit "P1" (letter dated 26/03/1992 written to Star Associated Auctioneers to evict Shining Star Motors (U) Ltd.). He saw exhibit "P2" of 25/08/1989 (receipt for Shs. 75m/= for purchase of the 1<sup>st</sup> Defendant's property by the Plaintiff) when the Plaintiff claimed he had bought the house. Both the aforesaid exhibits "P1" and "P2" were handed to the 1<sup>st</sup> Defendant's lawyers. The matter was entertained by the Buganda Road Court where DW2 testified. A judgment on appeal in the High Court given (exhibit "D11").

In cross-examination DW2 testified that exhibit "P1" was signed by Mugisa while exhibit "P2" was a receipt dated 28/08/1989. By that date he was not in the 1<sup>st</sup> Defendant's employment. He could not be sure of Mugisa's signature and he did not recall seeing this exhibit "P2".

DW3, Asaple Golora, testified that in 1982 the 1<sup>st</sup> Defendant employed him first as an accountant and later as Chief Accountant till he quit in 1997. While he was still an accountant in 1989 he was receiving revenue, effecting payments preparing reports for the Board supervising the writing of books of accounts and so on. During his tenure with the 1<sup>st</sup> Defendant, Star Shining Tours and Travel occupied one of the 1<sup>st</sup> Defendant's properties on Kololo Hill. DW3 knew the Plaintiff to be one of the officials of Star Shining Tours and Travel. He was familiar with Mugisa's signature. The signature on exhibit "P1" looked like Mugisa's. The witness did not have an active role in the sales of the 1<sup>st</sup> Defendant's properties. The signature on exhibit "P2" looked

like his. But it was not a receipt issued by him. He never received any money from the Plaintiff in respect of the property in dispute.

When referred to these two exhibits, DW3 testified that these two documents had come up in a court case where the Plaintiff had alleged to have purchased the property. DW3 gave evidence in that case. The Plaintiff was prosecuted for forging these documents.

In cross-examination DW3 testified that when the Plaintiff sued for damages to his property in the house in dispute he was still employed by the 1<sup>st</sup> Defendant. It was true the 1<sup>st</sup> Defendant instructed court bailiffs to evict the Plaintiff. The Plaintiff's property was thrown out. He was not aware that a court injunction was in place when the 1<sup>st</sup> Defendant instructed the court bailiffs. Exhibit "P2" was not a receipt issued by the 1<sup>st</sup> Defendant because it bore a signature which was not his.

DW4, Sam Kazibwe, testified as hereunder. In 1998 he was a High Court bailiff with M/S Star Association Auctioneers and Court Bailiffs. Around March 1992 the 1<sup>st</sup> Defendant instructed him to evict Bwete (the Plaintiff) from their house because the house had been sold and the 1<sup>st</sup> Defendant was desirous that the house goes into possession. On receipt of the instructions he wrote "exhibit "P2" to the Plaintiff who was in occupation, collected porters, and mobilized a pick-up. They proceeded to the area LCI Chairman and served the instructions of the 1<sup>st</sup> Defendant and his firm. The LCI Chairman refused to be party to the exercise, saying the Plaintiff was his voter. The witness nevertheless proceeded with his porters to the premises where they found the Plaintiff. They served the Plaintiff with the papers. At 9.00 a.m. they started the exercise by removing the property and putting it outside the fence. In the middle of the exercise the Plaintiff asked to go for a lorry to pack his property. He left. The eviction lasted up to 4.30 p.m. by which time the Plaintiff had not returned. DW4 and his team then locked the gate

and left, leaving a woman and man, whom the Plaintiff had left to look after his property, at the scene.

In further evidence DW4 stated that he did not make an inventory of the property he removed from the house. When shown exhibit "P6", he stated that his team neither destroyed nor took away corrugated iron sheets, wooden frames, doors or toilets. The team had gone to evict, not to attach. Most of the items in the exhibit were at the scene but were not destroyed. Apart from the 1<sup>st</sup> Defendant's instructions, no other authority gave him instructions. When shown exhibit "P7" he said he was seeing it for the first time. The practice in DW4's office was not to evict the same day they wrote the notice to the evictee. However, in the present case the 1<sup>st</sup> Defendant told them that the Plaintiff had become a headache to them and requested DW4 to act immediately.

In cross-examination DW4 testified as follows:

When the Plaintiff was served with the eviction notice he did not resist the removal of his property. They did not let him remove it himself because they were not sure he would comply. At the time they served the eviction notice on the Plaintiff they did not know he had filed a suit against the Defendants. After the eviction exercise they did not go back to the LC I Chairman because he had initially refused to cooperate, not that he did not have a court order. He agreed he and his team did not have a court order to evict the Plaintiff. He was shown exhibit "P8", a letter from Kololo LC I Chairman specifically mentioning that the Plaintiff had suffered at the hands of the same court bailiffs previously. Though it was addressed to them this was his first time to see it. When they finished the eviction they did not ask the woman and man the Plaintiff had left behind to look after his property to signify that nothing had been damaged or lost.

DW1, Miriam Wamalwa, (for 2<sup>nd</sup> Defendant) testified as follows:

He was the Executive Director of the 2<sup>nd</sup> Defendant with whom he had worked since 1990. The 2<sup>nd</sup> Defendant purchased the property in dispute sometime in 1990 after bidding and offering Shs. 160m/=. Before purchasing it the 2<sup>nd</sup> Defendant was not aware of any other person's interest in it. [The rest of this witnesses' evidence appeared unhelpful to the 2<sup>nd</sup> Defendant's case. Their Counsel withdrew him].

The next witness for the 2<sup>nd</sup> Defendant was D. Wamala:

He testified he was an advocate in the firm of Ms. Kateera and Kagumire. He testified that exhibit "P7" was a transfer instrument between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respecting LHR Vol. 374 Plot 6 Hill Lane, Kololo. The witness's firm handled the transaction as evidenced by the handwriting of Mr. Y. Kagumire, a Senior Partner in the firm and the format of the transfer instrument which was unique to the firm. That this exhibit was incomplete in that "Drawn....." was not there.

He further testified that exhibit "P10" was an application to transfer public land between the same parties respecting the said property. Mr. Kagumire's signature appeared on this exhibit. That the transaction was executed on 07/02/1992. The witness's firm lodged these documents on 18/02/1992; stamp duty was paid on 10/02/1992 and the transfer process was completed. According to exhibit "P6" the 2<sup>nd</sup> Defendant's name was registered on the title on 18/02/1992. In terms of Cap 202, Laws of Uganda, the Minister's consent was not necessary because both parties were non-Africans, since their shareholders were non-Africans and both their articles of association did not restrict transfer of shares to non-Africans. This was even obvious from exhibit "P8".

This evidence closed the evidence in the entire case. Counsel filed written submissions.

I will start with the issue:



Whether the first Defendant sold the suit property to the Plaintiff before selling it to the 2<sup>nd</sup> Defendant.

On a balance of probabilities the Plaintiff failed to prove his claim. The evidence of DW1 and DW2 for the 1<sup>st</sup> Defendant was not challenged in material respects.

The judgment of Ntabgoba, then Principal Judge, exhibit “D11” is very crucial to this case. I agree with learned Counsel’s submission in relying on the case of STUPPLE vs. ROYAL INSURANCE CO. LTD: (1970) 3 ALLER p. 230 and the provisions of our EVIDENCE ACT, S. 40

I therefore refuse to rely on exhibits “P1”, “P2” and “P3” which were condemned in exhibit “D11” where the burden of proof in forgery cases is one of the proof beyond reasonable doubt. The Plaintiff cannot hope to obtain a relief based on the same documents that were proved to be forgeries in a criminal case simply because the burden of proof in civil cases is on a balance of probability.

The second issue was: -

Whether the sale of the property to the 2<sup>nd</sup> Defendant was fraudulently done.

In paragraph 5 of his amended plaint the Plaintiff listed the particulars of fraud with regard to (a) and (b) this has been taken care of by my holding on the 1<sup>st</sup> issue hereinabove. With regard to (c) there was ample evidence by the defence exhibits “P6”, “D4”, “D7” and “D9” that the Plaintiff was very wide awake to the impending sale and made desperate but not genuine attempts to purchase the property but failed. I hold that this particular of fraud fails. With regard to particular (d) of fraud the Plaintiff attempted to rely on the facts that:

- the application for transfer and processing of it lasted only one day.

- the transfer was effected without the consent of the Minister.

According to the evidence of PW2, there was nothing abnormal for the process to take one day. I agree and find no illegality about it. With regard to the Minister's consent Defendant's witness D. Wamala as did PW1 got their law correct. This alleged ground of fraud also fails. I hold that the Plaintiff's second issue be answered in the negative.

The third issue was: -

Whether the sale of the suit property to the 2<sup>nd</sup> Defendant was illegal.

I repeat my reasoning and holding on the 2<sup>nd</sup> issue.

In this written submissions Plaintiff's Counsel submitted the 4<sup>th</sup> issue as: -

“Whether the 2<sup>nd</sup> Defendant suffered any damages from the Plaintiff’s refusal to vacate the premises.

I believe Counsel meant the 1<sup>st</sup> Defendant. This is clear both from the pleadings of both Defendants. Be that as it may he did not submit on it. The above notwithstanding, the 1<sup>st</sup> Defendant did not lead any evidence on this. In his written submission on the issue Counsel for the 1<sup>st</sup> Defendant appeared to be angling for damages without proving them. I will not swallow the bait. I answer the issue in the negative.

Issue No. 5 was the legality or otherwise of the Plaintiff’s eviction from the premises. The starting point here is my finding on the first issue. I answered it negative. The question is what was the status of the Plaintiff vis-à-vis the property as of the following dates. On 15/06/1989 (exhibit “P9”) the 1<sup>st</sup> Defendant wrote to the Plaintiff.

“The purpose of this letter is to request you to find an alternative accommodation by the 15<sup>th</sup>

June, 1989 at the latest to enable us carry out the above job. On completion of the replacement of the roof, you will be free to negotiate a fresh tenancy agreement with us.”

On 12/08/1991 (exhibit “P4”) the 1<sup>st</sup> Defendant wrote to the Plaintiff stating: -

“After carefully considering all possible alternatives to salvage this property, the company’s Board had decided to sell this property to the highest bidder. Our Valuers will soon visit this property to assess its market value.

The purpose of this letter is two fold:

- to request you to allow access to the Valuers to the premises.

- to notify you of this decision and hereby give the 3 months notice of premature termination of the tenancy agreement effective from the date of this letter.”

This letter clearly terminated the Plaintiff’s tenancy with the 1<sup>st</sup> Defendant with effect from October 12<sup>th</sup> 1991 when the “three months’ notice of premature termination” would expire.

On 13/08/1991 the Plaintiff wrote to the 1<sup>st</sup> Defendant, exhibit “D3”, stating, inter alia,

“Nevertheless I understand that the house at Plot 9 Impala Avenue is vacant. I would be most grateful if you could allocate it to me so that I can repair it in the 3 months period you have given me as notice to vacate 6A Hill Lane. I promise you that I will willingly repair this house at 9 Impala Avenue and restore it to first class condition, I also assure you that I will pay

rent for the 3 months when I will be repairing  
property now ... .”

This acceptance by the Plaintiff sealed the new relationship of the parties. They were no longer land lord/tenant as far as the property in dispute was concerned. Any stay by the Plaintiff longer than 12/10/1991 would amount to trespass, in the absence of any evidence to the contrary. And there was none.

On 07/02/1992 the 1<sup>st</sup> Defendant wrote to the Plaintiff “exhibit D2”.

UCP/M.53

February 7 1992

Shining Star Tours & Travel Ltd.

P. O. Box 3698

KAMPALA.

Dear Sirs,

SALE OF PLOT 6A/B HILL LANE KOLOLO

“Please refer to our letter to you of even reference dated January 13<sup>th</sup>, 1992, and get advised that the purchaser of the above property will take possession of the same on March 31<sup>st</sup>, 1992. You are accordingly requested to vacate the premises by that date.

Your cooperation in this regard will be greatly appreciated.”

Yours faithfully

UGANDA CONSOLIDATED PROPERTIES LTD



F. S. KAWEESA

COMPANY SECRETARY

FSK/es

He was thus putting the matter beyond doubt that the Plaintiff had to vacate. The evidence now reveals that Plaintiff refused to vacate. On 26/03/1992 DW4 wrote to the Plaintiff exhibit "P2": -

26<sup>th</sup> March 1992.

M/s Shining Star Motors (U) Ltd,

P. O. Box 3698,

KAMPALA.

Dear Sirs,

RE: EVICTION INSTRUCTIONS:

“We received express instruction from M/s Uganda Consolidated Properties Ltd. to evict you from the house on plot No. 6 Hill Lane Kololo which you are occupying illegally.

Therefore, you are directed to give us a vacant possession of the premises today without failure.

Stand dully warned.”

Yours faithfully,

STAR ASSOCIATED AUCTIONEERS

c.c. Jinja Road Police Station.

c.c. Chairman R.C.1 of the area & Committee members.

He served it on the Plaintiff the same day and carried out the eviction on the same day.

In his submissions Counsel for the Plaintiff submitted: -

“It is therefore our submission that this Honourable Court should pronounce the eviction of Plaintiff by Defendants as unlawful and/or illegal on the basis that there was never any eviction order and that the said eviction was executed amidst a temporary injunction staying the same exhibit “P7”.

In passing I must state that exhibit “P7” was not “a temporary injunction”. It was an administrative letter by the Ag. Deputy Registrar. Counsel further relied on FENEKANSI SEMAKULA vs. MUSOKE & 2 OTHERS: {1981} HCB 46. Following on my holding on the first issue and implied in my discussion of this issue I hold that the Plaintiff was a trespasser on the suit property at the time he was evicted. The 1<sup>st</sup> Defendant did not need any court order to effect the eviction in the

circumstances. I rely on HALSBURYS LAWS OF ENGLAND (3<sup>RD</sup> Ed) VOL. 38 PARAGRAPH 1207 and VOL. 23 PARAGRAPH 1446.

I therefore conclude this issue by holding that the eviction of the Plaintiff was lawful.

I now revert to the issue: -

“Whether any properties were lost/damaged in the process of the said eviction.”

The Plaintiff presented exhibit “P6” which showed the value of the alleged destroyed property to be Shs. 202,135,000/= (Two hundred and two million one hundred and thirty five thousand shillings only). DW4 admitted that most of the items in exhibit “P6” were at the house. He, however, denied taking away or destroying any of them. He also told that the Plaintiff had left behind a woman and man to take care of the properties when he claimed he was going to get a lorry to ferry them. The cost prices were not supported by any document evidence. He claimed that the receipts were stolen by court brokers on 27/07/1994 when he was in Luzira serving a jail sentence. It is settled law that specific damages must

particularized in pleadings and strictly proved. The Plaintiff has not discharged this burden.

I dismiss the Plaintiff's suit with costs.

**Sgd: Gideon Tinyinondi**  
**JUDGE**  
**27/02/2006.**

**15/03/2006:**

Mr. Nyeko for the 2<sup>nd</sup> Defendant

Mr. Tom Magezi for the Plaintiff.

Holding brief for Mr Kabega

Mrs. B. Wasswa for the 2<sup>nd</sup> Defendant.

**COURT:**

The judgment was ready.

**Sgd: Gadenya Paul Wolimbwa**  
**ASSISTANT REGISTRAR**  
**15/03/2006.**