THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA; AT FORT PORTAL CIRCUIT

CIVIL SUIT No. 0003 OF 2001

IVAN MUHASA MPONDI …….. PLAINTIFF

VERSUS

KASESE DISTRICT LOCAL GOVERNMENT …… DEFENDANT

BEFORE: - THE HONOURABLE MR. JUSTICE CHIGAMOY OWINY – DOLLO

JUDGMENT

The Plaintiff herein brought this action for recovery of rent, mesne profits, special damages, general damages, and eviction orders against the Defendant. The Defendant was duly served with both the statutory notice and the suit but did not bother to respond to either. Counsel for the Plaintiff then, citing O.9 r. 11(2) of the CPR (as amended), applied for an interlocutory judgment; and for the suit to be set down for formal proof. O.9 r. 11(2) of the CPR (as amended), under which the Plaintiff had applied for an interlocutory judgment, reads as follows:

> *"Where the time allowed for filing a defence or, in a suit in which there is more than one defendant, the time allowed for filing the last of the defences has expired and the defendant or defendants, as the case may be, has or have failed to file his or her or their defences, the plaintiff may set down the suit for hearing ex parte."*

The Deputy Registrar entered an interlocutory judgment for the Plaintiff in the following words:

> *"Upon looking at a letter applying for interlocutory judgment and upon perusing the file, I am satisfied that the defendant was properly served and consequently interlocutory judgment is entered against the defendant."*

In fact both the application for, and the interlocutory judgment given by the Deputy Registrar, were wrong. It is under O.9 r.8 of the CPR, where the Plaintiff claims pecuniary damages only, or for detention of goods, that the Registrar may enter an interlocutory judgment if the Defendant fails to

file a defence notwithstanding that summons requiring him or her or it to do so, has been duly served; and thereafter set down the suit for assessment of such damages, or value of goods as the case may be. Since the application, in the instant case, was brought under O.9, r.11(2), the suit was intended to proceed ex parte without any prior interlocutory judgment. I therefore ignore that interlocutory judgment.

Be it as it may, when the suit came up for the hearing, the Plaintiff was the sole witness. In his testimony, he testified that he is the proprietor of 100 acres of land which is part of land comprised in Plot 6 Block 28 situated at Kanyampara village, Kachungiro parish, Munkunyu Sub–County, Kasese District; and that he had acquired the of land, way back in 1973, by purchase. He tendered in Court evidence of his purchase of the suit land, and the caveat he placed on the freehold title in 1973 to protect his interest therein. This was exhibited and marked as '*PE1*'. It is part of this land, measuring 20 (twenty) acres (herein after the suit land), that he stated, the Department of Agriculture encroached onto sometime before 1985, during the Rwenzururu war; and that when he returned to the land in 1985, he discovered the encroachment, and demanded vacant possession, but in vain.

He stated further that the Defendant has perpetuated the act of encroachment onto the suit land since 1995 when, under the policy of decentralisation, the Department of Agriculture fell under it; and has caused plantations to be cultivated thereon. He stated further that the Defendant has not paid him at all, for use of the land on which he would have planted crops such as banana, coffee, cassava, and eucalyptus trees, just as he has done with the remaining 80 acres that have not been encroached upon. As a consequence of being denied use of that land, he has suffered loss. Upon Court examination, he revealed that the year Idi Amin was over–thrown (this is 1979) the Department of Agriculture had already encroached onto the suit land; but that at the time he purchased it in 1973, there was no such adverse occupation.

The Plaintiff, however, made no effort to prove the special damages claimed in the plaint. It is the duty of the Plaintiff to prove, during the hearing, the claims set out in the plaint, even where the Defendant has not filed a defence, and the suit has therefore proceeded ex parte. On the evidence, I am satisfied that the Plaintiff is the proprietor of the suit land by purchase; and that indeed the Defendant is in occupation of that piece of land without his authority. This is an act of trespass which the Defendant has perpetuated from 1995 when it took control of the department of

Agriculture, and found it in wrongful occupation. Accordingly the Plaintiff's claim in that regard is well founded.

It is trite law that claims for special damages have to be specifically pleaded and strictly proved if they are to be allowed. In the instant case, the Plaintiff has not bothered to prove the special damages which were set out in paragraph 8 of the plaint. I therefore disallow all the claims for special damages. However, since the Plaintiff has adduced convincing evidence that he has put the other 80 acres of his land under crop; and that had it not been for the encroachment complained of he would have done the same with the suit land, he is entitled to an award of general damages; and to this I will advert later in the judgment.

I need to point out that since the Defendant is a trespasser onto the suit land, and has perpetuated the adverse occupation, the Plaintiff cannot claim for rent from it. Rent is a right that accrues to a landlord from a tenant; and arises from a contractual relationship created between the parties. What the Plaintiff can properly claim, in the circumstance of a trespass like the present one, are mesne profits which result from his having been wrongfully denied use of the suit land. Unfortunately, Court was not assisted to arrive at what would be considered the deserving award of mesne profits in the circumstances; and therefore I have to look at the surrounding factors to do the best I can.

The Plaintiff's evidence is that he would have put the suit land to agricultural production of food and cash crops just like the portion which has not been encroached upon. I therefore consider an award of U. shs. 100,000/= (One hundred thousand only) per acre, per annum, reasonable award as mesne profits for the encroachment onto the suit land from the year 1995, until the Defendant gives vacant possession of the suit land to the Plaintiff. This means that, for the 15 years of trespass, up to the date of this judgment, the Plaintiff is entitled to U. shs. 30,000,000/= (Thirty million only). The Defendant has plantations on the suit land and must have derived some benefit therefrom for all these years of trespass.

The wrongful occupation has certainly caused the Plaintiff much pain and inconvenience. I consider a one–off award of general damages in the sum of U. shs. 5,000,000/= (Five million only) reasonable atonement for the Defendant's wrongful occupation. The Plaintiff is entitled to immediate vacant possession of the suit land. In the result I hereby make the following orders:

(i) The Defendant is hereby ordered to give vacant possession of the suit land to the Plaintiff forthwith.

(ii) The Defendant shall pay to the Plaintiff the sum of U. shs. 30.000.000/= (Thirty million only) as mesne profits for the 15 years it has been in wrongful occupation of the suit land so far.

(iii) The Defendant shall be liable to pay to the Plaintiff the sum of U shs. 100,000/= (One hundred thousand only) per acre, per annum, from the date of this judgment, until it gives vacant possession of the suit land to the Plaintiff.

(iv) The Defendant shall pay to the Plaintiff the sum of U. shs. 5,000,000/= (Five million only) as general damages for trespass.

(v) The decretal sums herein shall attract interest at 6% per annum from the date of this judgment.

(vi) The Defendant shall pay the taxed costs of this suit to the Plaintiff.

Alfonse Chigamoy Owiny – Dollo

JUDGE

09 – 02 – 2010