

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-CS-0045-2016

AMINA MIIRO

**(ADMINISTRATIX OF THE ESTATE OF PLAINTIFF
THE LATE HAJJI NASSULU MIIRO)**

VERSUS

1. MBABAZI MWAJABU

2. NABUKALU HAWA

3. SANYU NULIAT

..... DEFENDANTS

4. SSEMAKULA ISSA

5. KAGWA MEDDIE

**(ADMINISTRATORS OF THE ESTATE OF
THE LATE HAJJI AHMADA BARUGAHARE)**

BEFORE: HON JUSTICE DUNCAN GASWAGA

JUDGMENT

[1] The plaintiff brought this suit against the defendants jointly and severally for trespass on land described as Plot 49 Block 2 Isingiro Mbarara District (*suit land*) and orders for compensation, eviction and permanent injunction.

Facts

[2] The background of this matter is that on the 1st November 1978 the plaintiff's late husband, a one Hajji Nasulu Miiro entered into a sale agreement with the late Hajj Ahmada Barugahare (*the defendants'*



father) for the purchase of the suit land at a consideration of UGX. 1,000,000/=. After the agreement the late Hajji Nasulu Miiró (who was then the purchaser) made several payments to the tune of UGX. 910,000/= leaving a balance of UGX. 90,000/=. On the 27th May 1980 the late Hajji Nasulu Miiró conveyed the balance to the seller (the late Hajj Ahmada Barugahare) but the later declined on grounds that he was no longer interested in selling the suit land. The late Hajji Nasulu Miiró then sued the seller vide CS-MMB-001-1981 seeking an order of specific performance. The matter was heard and the trial Judge (Kato, J as he then was) held that;

"In final conclusion I must enter judgment in favour of the plaintiff (Hajj Miiró) with costs of this suit and I do order that the defendant (Hajj Barugahare), his agents, and or servants do permanently stop interfering with the plaintiff's quiet possession of the land now in dispute. The plaintiff must however, complete his part of the bargain by paying to the defendant the balance of 90,000/= (ninety thousand shillings only) within 30 days to day (2.12.82). So be it done."

- [3] The late Hajj Barugahare did not appeal against the judgment. The plaintiff, Hajji Nasulu Miiró then wrote to the Secretary at the Land Committee, Mbarara requesting for his lease application No. 2046 of 14/05/1982 to be granted since it had halted pending the determination of CS-MMB-001-1981. On 10/11/1992 the Uganda Land Commission granted the application No. 2046 and a lease offer to that effect was issued. Instructions to survey the suit land were then issued to a surveyor on the 13th July 1994. Before a Certificate of title was

processed Hajji Miiró died in October 1998 leaving behind a widow (*the plaintiff now*) and several children.

- [4] The widow (*plaintiff*) then applied for and was granted Letters of Administration over the estate of the late Hajji Miiró on the 24th November 1999. The plaintiff proceeded to apply for the Certificate of Title and on 22/01/2004 a minute (***under MIN. NO. MDLB 15/04/06 (A) (73)***) was entered by the Mbarara District Land Board. A Certificate of Title was finally issued to the plaintiff on 29/7/2004 effectively on 1/2/2004 in respect of Isingiro Block 2 Plot 49 (*the suit land*).
- [5] Before the death of Hajji Barugahare (*the defendants' father*) he instituted **CS-364-2009** at Mbarara Chief Magistrates Court against Kayiira Moses (*son of the Late Hajji Miiró*) and one Miiró Kizito Yasin in respect of the suit land. It should be remembered that by this time Hajji Miiró had passed on and the plaintiff had already acquired a Certificate of Title of the suit land. **CS-364-2009** was dismissed on the 27/8/2012 by the Magistrates Court for want of prosecution and this too happened after Hajji Barugahare, the then plaintiff, had died. Following the dismissal, the children and administrators of the late Hajji Barugahare (*the defendants herein*) filed **MA-0101-2014** to reinstate **CS-364-2009** in the names of the late Hajji Barugahare. The application was heard ex-parte and the trial Magistrate in his ruling did not reinstate **CS-364-2009** but instead granted the orders prayed for by the late Hajji Barugahare in the main suit **CS-364-2009**, including an eviction order.
- [6] Execution process commenced expeditiously and the plaintiff now, who was never a party in **CS-364-2009** but in occupation of the suit



land having acquired title in her names, was evicted from the same by Court bailiffs. The plaintiff together with Kayiira Moses then applied for revision against the ruling in MA-0101-2014 in the High Court vide MA-0045-2016. The application was heard and the trial judge ordered for the *status quo* to be maintained with the following orders;

" 1. The decision and orders of Magistrate Grade 1 in Miscellaneous Application No. 101 of 2014 affecting Kayiira Moses are set aside.

2. All disputes involving Amina Miiró the Administratrix of the estate of the late Hajji NasuluMiiró on the one hand and Mbabazi Mwajabu, Nabukalu Hawa, Sanyu Nuliat, Semakula Issa and Kaggwa Meddie administrators of the estate of the late Hajji Ahamad Barugahare on the other, should be referred to a competent court to be heard and determined on merits.

3. I will not make any orders as to costs considering the fact that Kayiira Moses had been served and he was aware of the court case but only ignored the same, yet the administrators of the respective estates joined an application that ideally was not theirs."

[7] It should be noted that by maintaining the *status quo*, in effect the Court meant that the plaintiff who had already been evicted from the suit land should remain off the said land while the defendants, who had taken occupation, should stay on the land.

[8] The plaintiff, aggrieved by this decision, then brought the current suit seeking for compensation of her lost property since her eviction from



the suit land; an eviction order against the defendants and/or their servants and agents; a permanent injunction and payment of general, exemplary and special damages.

[9] In a bid to prove her case, the plaintiff brought three witnesses. Before hearing this matter Counsel Kanduho for the defendants raised two preliminary objections which he stated would dispose off the suit. One of the objection was about the matter being *res judicata* in light of the judgment rendered by this Court between the same parties in **CS-MMB-001-1981**. The second objection was regarding the incompetence of this suit in so far as the plaintiff seeks to set aside execution proceedings by way of filing a fresh plaint.

[10] At the hearing, I had indicated in my ruling of 23/10/2017 that the said preliminary objections would be resolved in the main judgment pursuant to Order 6 rule 28 of the **Civil Procedure Rules SI 71-1** and Section 98 of the **Civil Procedure Act Cap 71**. I shall now start by resolving the preliminary objections as raised by counsel for the defendants.

In order to determine the first objection it is incumbent for this Court to reiterate the doctrine of *res judicata* as set out in **Section 7** of the **Civil Procedure Act Cap 71**:

“No court shall try any suit in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in

which the issue has been subsequently raised, and has been finally decided by that court."

[11] The above provision outlines the following parameters that must be satisfied for the doctrine of *res judicata* to be applicable to a matter:

1. *The existence of a former suit that has been finally decided by a competent court.*
2. *The parties in the former suit should have been the same as those in the latter suit, or parties from whom the parties in the latter suit, or any of them, claim or derive interest.*
3. *The parties in the latter suit should be litigating under the same title as those in the former suit.*
4. *The matter in dispute in the former suit should also be directly and substantially in dispute in the latter suit where *res judicata* has been raised as a bar.*

See also: Karia & Another vs. Attorney General & Others (2005) 1 EA 83 at 93 (Supreme Court, Uganda) and Lotta vs. Tanaki & Others (2003) 2 EA 556 at 557 (Court of Appeal, Tanzania).

[12] In the instant case there is ample evidence to show that the parties are each holders of Letters of Administration in respect of the estates of the late Hajji Miir Nasulu and Hajji Ahamad Barugahare who litigated as plaintiff and defendant, respectively, in CS-MBR-001-1981. Although the litigation was over the same subject matter, the suit land, the cause of action was different. In CS-MBR-001-1981 the cause of action was specific performance and breach of agreement whereas in the current suit it is trespass, and eviction and compensation orders are sought. Without even going into any further details, I decline the

invasion by the defendants' Counsel to strike out the plaint on account of *res judicata*, in that the issues at hand are similar and substantially the same as those in the earlier suit although one of the prayers i.e ' a *permanent injunction*' had been sought again.

- [13] In these circumstances, all the facts and factors must be looked at as a whole and not individually. Accordingly, it cannot be said that the plaintiff in this suit is trying to bring to Court in another way or in form of a new cause of action which she had already put before a Court of competent jurisdiction in earlier proceedings and has been adjudicated upon. See: Bautique Chasin Ltd Vs. Northern Bhatia & Anor COA, C.A No. 36/2007 and Barclays Bank of Uganda Ltd Vs. Jean Hong, High Court, Commercial Division C.S No. 35 of 2009.
- [14] Even if one were to accede to Counsel's assertion for a second (*which is not the case*) that indeed the issues and orders in the current suit were similar and substantially the same as those that were decided and issued in the earlier case, respectively, still the doctrine of *res judicata* would not apply because these are fresh acts of trespass, eviction, destruction of property etc complained of by the plaintiff and would require fresh adjudication. They are clearly not issues of *res judicata*. It's immaterial whether the subject matter and or parties are still the same.
- [15] Counsel also raised a **second preliminary objection** to the effect that the suit is incompetent in so far as the plaintiff seeks to set aside execution proceedings and orders of the Magistrate Grade One vide Mbarara Chief Magistrates Court MA No. 101 of 2014 between Amina Miiro (applicant) and the present defendants (as respondents).



Pursuant to the Magistrate Grade One's decision a warrant to give vacant possession was issued and executed in favour of defendants thereby the plaintiff being evicted. It was submitted for the defendant that the course of action to take in the circumstances should have been for the aggrieved or dissatisfied party to (a) appeal to the High Court to have the decision set aside (b) review or (c) seek a revision before the High Court. That by filing a fresh plaint to set aside the lower Court execution proceedings which proceedings are not in issue before this Court was wrong and rendered this suit incompetent and a non-starter.

[16] I have had the opportunity to diligently consider the arguments by both Counsel on the matter. From the record, it is beyond the ground of contention that in **MA-0101-2014** before the Magistrate Amina Miiro (*plaintiff now*) was not a party but one of her sons Kayiira Moses was while the second respondent (*Miiro Kizito Yasin*) was a non-existent/fictitious person. The eviction orders given by the Magistrate's Court clearly affected Amina Miiro, the sole holder of Letters of Administration to the estate of the late Hajji Miiro, more than any other person. In looking for a solution she together with Kayiira Moses lodged a revision **MA-045-2016** before the High Court which set aside the said decision and at the same time maintained the status quo i.e maintained the eviction until further or otherwise ordered.

[17] Indeed it was open to the plaintiff to pursue any one of the above stated remedies (*save for appeal because she was not a party to the lower court proceedings*) or even filing objector proceedings under Order 22 of the Civil Procedure Rules SI 71-1. See: **Grace Muhwezi & B. Tabaruka Vs. Abdu Yusuf, Batical Stores & Rainbow Ranches Ltd, Kampala High Court CS No. 90 & 91 of 2001.**



[18] Given the unique circumstances of this case I do not believe that instituting a fresh suit, as the plaintiff did, instead of objector proceedings as submitted by Counsel would be fatal to the proceedings in any way. Although objector proceedings can convert into a suit, in this dispute what matters most is the substantive justice of the case. Given the kind of prayers and or remedies sought by the plaintiff and the evidence led to substantiate and sustain the cause of action, I am fully convinced that a fresh suit was the best course of action to take. What is crucial at the moment is whether the plaintiff has clearly laid down her case and the defendant has an answer to that claim. Needless to emphasize that when administering justice a Court of law should have undue regard to technicalities. **See: Article 126 (2) (e) of the Constitution of the Republic of Uganda 1995.**

[19] Consequently, I find that both preliminary objections raised by the defendants' are devoid of merit and are hereby overruled.

[20] Counsel for the plaintiff Mr. Bwatota Bashonga and Counsel for the defendant Mr. Kanduho framed three issues to be resolved:

- 1. Whether the plaintiff was wrongly evicted by the defendants.***
- 2. Whether the defendants are trespassers on the disputed land.***
- 3. What remedies are available to the parties***

[21] Before I embark on resolving the issues, I have to point out the conduct of the defendants in the course of hearing this matter. This Court set a

date for the parties to appear and the defendants to bring their witnesses and put up their defence. Hearing notices were extracted and served personally on Counsel for both parties a week prior to the hearing date and were duly acknowledged (*copies of the same are on record*). When Court convened on the agreed date (10/10/2018) to hear the defence case, neither the defendants nor their Counsel was in attendance. The matter was stood over to 11:00am and still they did not show up. Fresh hearing notices were extracted and again served, this time personally on the defendants to enter appearance. The matter was stood over to 2:00pm. At 2:00pm two defendants appeared without their witnesses nor Counsel and claimed not to be aware of Court's sitting on that day. They also stated that their Counsel had told them that he was appearing in another matter at Kampala and needed another date. The Deputy Registrar also informed Court that he had communicated to Counsel for the defendants on phone and had assured him that he had been served but would appear on Friday the 12/10/2018. The matter was then painfully adjourned to Friday at 1:00pm with strict instructions for the defendants to appear with their witnesses and Counsel. They were actually advised to engage Counsel who was not only able and willing but also ready and available to appear in Court and defend them given that the hearing had been delayed.

- [22] Court reconvened on Friday and this time only DW1 appeared and still without any witnesses nor Counsel. When given the opportunity to address Court, DW1 stated that first of all, they did not intend to bring one witness as was previously stated by their Counsel, but instead had three witnesses. That those witnesses were also far from the jurisdiction of this Court. She further stated that it would take some time



to bring them to Court to testify. As for her Counsel's absence, she said nothing. There was no communication at all from the Counsel.

- [23] This court noted that the defendants were playing tricks to delay the determination of this suit which has taken quite a long period of time in the Court system. It's indeed very unfortunate that the defendants resorted to such conduct. In agreement with Counsel for the plaintiff's prayer, the defendants' case was closed under Order 17 rule 3 and 4 of the **Civil Procedure Rules SI 71-1** and the matter proceeded for submissions. Only Counsel for the plaintiff filed written submissions. DW1 stated that she was only interested in witnesses but not submissions. Counsel for the plaintiff argued each of the agreed issues separately. I shall however not follow the same order because the issues are somewhat related and the determination of one has the effect of disposing off the other. In that regard I shall handle both issues one and two concurrently then issue three separately.

Issue 1: Whether the plaintiff was wrongly evicted by the defendants

Issue 2: Whether the defendants are trespassers on the disputed land

- [24] PW2 Kayiira Moses corroborated PW1 Amina Miiro's testimony that the plaintiff had been in occupation and usage of the disputed land since 1978 when her late husband purchased it from the defendants' late father undisturbed until the 11th March 2016 when she was evicted by the court bailiffs. Further that the plaintiff is at all times the registered proprietor of the suit land having processed and acquired a certificate of title for it. That the orders in the ruling of **MA-0101-2014** were not against the plaintiff as she was never a party to the suit in the first

place. That she holds a certificate of title which has never been challenged in court and that is conclusive evidence of her ownership of suit land.

[25] PW1, PW2, Lutaya Yusuf (PW3) and Ssekaja Muzamiru (PW4) narrated how the plaintiff was evicted from the suit land by court bailiffs and has since then been living outside her land under a tent provided by a good Samaritan on the adjacent land. This was in the presence of the defendants. That as a result of the eviction the plaintiff has lost her property, chicken and other household valuables. She prayed for specific and general damages to the tune of UGX. 100,000,000/= and 120,000,000/= respectively.

[26] In their Written Statement of Defence the defendants asserted that they are lawfully in occupation of the suit land and have both usufructuary and proprietary rights. They further alleged that the plaintiff's title was processed through fraud but surprisingly did not specifically plead nor prove the particulars of fraud as required by the law. **See: Kampala Bottlers Vs Damanico (U) Ltd SCCA No. 22-1992.** Moreover, not even a counterclaim was filed by the defendant for anything.

[27] I have duly considered the submissions of the plaintiff's counsel and the defence evidence on record. As already stated above it is an agreed fact that the plaintiff's late husband and the defendants' late father litigated over the suit land back in the 80s. Judgment was entered in favour of the plaintiff's husband and an injunction was issued against the latter with his servants and agents. This decision was never appealed. Another suit was filed by the late Hajji

Barugahare against one of the children of the late Hajji Miiró and a non-existent person or stranger (*Miiró Kizito Yasin*). That suit was dismissed for want of prosecution. It is from that point that the chaos started.

- [28] An application for reinstatement of that suit was instituted by the defendants in their late father's names. First of all, in my view this alone was enough to have the matter dismissed. The rules of procedure are clear. A dead person cannot litigate. See: Pathack Vs. Mpweke (1964) EA 24 and Rwakakaiga Vs. Charles Baryayebwa High Court, Mbarara. As if that was not enough, it is unclear why even in the application for reinstatement the trial Magistrate in his ruling did not anywhere and at no point reinstate the same. He instead granted the prayers sought for in the main suit by a dead man which had been dismissed and therefore non-existent.
- [29] I have taken ample time to study and review both rulings in MA-101-2014 by the Magistrate and MA-0045-2016 by the High Court where the learned Judge set aside the decision and orders of the Magistrate Grade One affecting Kayira Moses as the second respondent. It must however be stressed that the learned Magistrate's ruling (*PE9*) and its attendant orders is the most unfortunate thing that happened in this whole land dispute. He was only invited to reinstate the main suit which had been dismissed but clearly he overstepped the invitation and therefore mandate. First, he dealt with this application ex-parte and purported to have re-instated the main suit whereas not.
- [30] In the course of the same transaction the learned Magistrate then granted the prayers sought in the non-reinstated main suit and made

several orders including that of eviction of the current plaintiff who had not only been in quiet enjoyment of the suit land since 1978 but also had an undisputed certificate of title. To make matters worse, she (*plaintiff*) was neither a party to any of those Court proceedings (*cases*) nor served with any Court papers before the eviction. This was done intentionally as confirmed by DW1 Nuliat in cross-examination that *"I took the Court brokers to Amina's land who was not a party to this case because she is their mother."* According to PW1, PW2, PW3 and PW4, the early morning (06:40am) eviction was executed so recklessly and ruthlessly leading to destruction of houses, crops and plantations and other properties. **See photographs in PEII.** The plaintiff's son, Kayira Moses (PW2) was in the process arrested and detained. All this injustice was occasioned as a result of the Magistrate's Court ruling.

[31] In the High Court Judgment of 1981 Justice Kato in no uncertain terms cleared and settled the issue of title or ownership of the suit land and there was no appeal. The attempt by DW1 Sanyu Nuliat to present the five sale agreements (*DE11, DE12, DE13, DE14 and DE15*) dated 17/2/1984, 18/12/1978, 6/11/1978, 1/2/1979 and 30/12/1978 claiming to be the ones on which their late father bought the suit land cannot hold. Their own father should have relied on them in **CS-MMB-001-1981** if indeed they were available but did not. Moreover, he litigated and lost to the plaintiff's husband. I therefore disbelieve her when she states that her father gave her those agreements to keep. If indeed it's true and they are valid then they don't relate to the suit land.

[32] Indeed all the proceedings **(CS-364-2009, MA-001-2014 and MA-0045-2016)** that came up later after the judgment in **CS-MMB-001-1981** litigating over rights of ownership or title over the same land

murdled up the situation. After reviewing the decision in MA-001-2014 once again I find that it was incompetent and illegal and should not be left to stand even for an extra minute if justice is to be done. It also goes without saying that everything emanating from this decision, including and most especially the eviction conducted against the plaintiff, was unlawful. In such circumstances, it does not matter how it came to the attention of this Court. It was held in Makula International Ltd Vs. His Eminence Cardinal Wamala CA No.4 of 1981 that; *"An illegality once brought to the attention of the Court overrides all questions of pleadings."*

Although the plaintiff as a law abiding Citizen had complied with the illegal orders to allow the eviction to take place this did not in any way make good the position by validating the said eviction orders. Those orders should immediately be quashed and set aside.

- [33] From the uncontested evidence, it is apparent that the Certificate of Title for the suit land is in the names of the plaintiff. Apart from merely alleging in the Written Statement of Defence that it had been fraudulently obtained no particulars of fraud were outlined let alone proved to challenge it. According to Section 59 of the Registration of Titles Act this is conclusive evidence that the plaintiff is the owner of the suit land which she has occupied since 1978. The defence witness (DW1) Sanyu Nuliat corroborated the testimonies of the plaintiff and her witnesses that a Court bailiff hired by the defendants had on the 11/3/2016 evicted the plaintiff from the suit land and handed vacant possession to them. **See warrant (PE6) and return of warrant (PE9).** However this Court does not believe her testimony that the Court bailiffs/brokers first removed the plaintiff's things from the house, handed them over to her before starting to break the house.

[34] In conclusion, I find that the plaintiff was wrongly evicted by the defendants from the suit land to which she had full title and was in occupation since 1978. The defendants, to whom vacant possession was handed are now in occupation of the said land but illegally. They are trespassers. Trespass was defined in the case of **Justine E.M.N Lutaya Vs Strling Civil Engineering Company Ltd C.A No. 11 of 2002** in the following terms;

"Trespass occurs to land where a person makes an un authorised entry upon land and thereby interferes with another person's lawful possession of that land. Needless to say that the tort of trespass to land is committed not against the land but against the person who is in actual or constructive possession of the land. At common law, the cardinal rule is that a person that is in possession of the land has capacity to sue for trespass."

The above two issues are settled.

Issue 3: Remedies available to the parties

[35] In her plaint, the plaintiff prayed for (i) compensation for her lost property (ii) eviction order (iii) permanent injunction (iv) payment of general damages, exemplary and specific damages and (v) costs of case.

[36] It is not in dispute that the defendants evicted a wrong person (*the plaintiff*) from her land in the process of executing the illegal orders in **MA-101-2014** where the plaintiff was not even a party. The uncontroverted evidence on record shows that the plaintiff, a title holder who had been in occupation and utilizing the suit land since

1978, was wrongly evicted on 11/3/2016 and ever since she has been living in a tent erected in a forest on the adjacent land belonging to one Walakira, exposed to all sorts of elements, insecurity and weather vagaries. Further injustice was occasioned when the Court bailiffs woke up the family very early in the morning and started pulling down the houses in the compound.

- [37] Kayiira Moses PW2, PW3 & PW4 corroborated the plaintiff's evidence that her house which was a self-contained bungalow with electricity, flushing water toilets, water sinks and metallic door was destroyed. Another unit serving as the kitchen and poultry house whose doors and windows were removed was also destroyed. The doors and windows of the poultry feeds store were removed and taken. Photographs (PE11) clearly show the state of the plaintiff's home and plantations immediately after the demolition and eviction.
- [38] The plaintiff estimated her house to cost UGX 50, 000,000 and the kitchen unit UGX 10, 000,000. PW1 and PW2 told court that the household property included chairs, tables, refrigerator, source pans, plates, mattresses, beds clothes etc which were thrown out of the house into the open and exposed to rain and some of it eventually got destroyed. All these items were estimated to cost UGX 25,000,000/=. A claimant must reasonably cut their losses depending on the prevailing circumstances. PW1 and PW2 further stated that they had managed to remove some of the things thrown and scattered in the compound but also failed to remove others because they had nowhere to take them. The plaintiff was also stopped from accessing the compound to remove other properties by the SARASEN security guards who had been deployed at the venue.

- [39] Credible evidence was also led to the effect that at the time of eviction the plaintiff was rearing 2000 chicken (*layers*) which they had no time to remove and left it behind. Lutaya (*PW3*) who had been allowed regularly to return on site and feed the chicken was attacked, cut with a panga and a spear and got wounded severely on the 17/03/2016 and never returned. 600 of the chicken died due to exposure to harsh weather conditions and the remaining 1,400 chicken were taken by the defendants. Valuing each one at UGX. 12,000 the plaintiff claims UGX 16,800,000 for the 1,400 chicken that was taken by the defendants. The plaintiff also had 6 cows 2 of which were stolen by the defendants and each was valued at UGX. 1, 200,000. She claims 2,400,000 for the two cows and another UGX 2,000,000 for the banana plantation that was cut down.
- [40] The plaintiff claims the value of the building materials which were in the house garage at the time of eviction. These included 40 iron sheets valued at UGX. 8,000 each= 320,000, a metallic double door valued at UGX 300,000, 2 wheel barrows valued at UGX 140,000 each = 280,000, 8.5 bags of cement each valued at UGX 34,000 = 289,000, 2 wooden doors each valued at UGX 250,000= 500,000, 145 sheltering boards valued at UGX 750,000, a water tank valued at UGX 1,600,000, 2 bow machines for cutting meat each valued at UGX 6,000,000 = 12,000,000, chicks fixing machines valued at UGX 1,900,000, 300kg of maize brand valued at 1,500,000, and 4 goats each valued at UGX 150,000 = 600,000.
- [41] It should be noted that for some of the above items claimed there were no receipts provided while other receipts (*PE 12*) totalling UGX 65,000,000 were tendered in court. Indeed I agree with the plaintiff that given the circumstances of this case especially that she had stayed in

these premises since 1978 there are many other household properties that could not easily be valued yet they were lost or destroyed. In all, Counsel submitted that the plaintiff should be compensated in the sum of UGX. 100,000,000/= as specific damages.

[42] In their defence, the defendants had promised to put the plaintiff to strict proof of her allegations regarding the above claims but this was never done. Even the defence Counsel's suggestion during cross-examination of PW2 that it was PW2 and PW3 who stole the plaintiff's chicken could not hold because after eviction the premises were guarded by SARASEN security guards who had been deployed by the defendants. All the testimonies of the plaintiff's witnesses were tested on the touchstone of cross examination. Indeed PW2 alone was cross examined by the defendants' Counsel for a number of days. The more he was cross examined the more he explained things in detail and even became clearer especially with regard to each of the receipts that had been tendered in support of the plaintiff's claims.

[43] Special damages must not only be specifically pleaded but also proved. **See: Omunyokol Vs. AG Supreme Court Civil Appeal No. 06/2012.** From the above evidence, I noted that although some items had been lost or destroyed the plaintiff had no supporting documentation or evidence to prove her claim. All the above approved claims add up to UGX. 104,239,000/=. Be that as it may, the plaintiff's Counsel in his submissions prayed for UGX. 100,000,000/= as specific damages. I shall therefore award a sum of UGX. 100,000,000/= to the plaintiff as special damages.

[44] The plaintiff also prayed for general damages to the tune of UGX.120, 000,000/=. It was held in the East African Court of Appeal case of Dharamshi Vs. Karsan [1974] 1 EA 41 that general damages are awarded to fulfil the common law remedy of *restitution in integrum*. The remedy is that the plaintiff has to be restored as nearly as possible to a position he or she would have been had the injury complained of not occurred.

[45] Since her eviction on 11/3/2016 the plaintiff and her family continue to live in the forest under a tent exposed to harsh conditions which have caused her health situation to deteriorate severely. She can no longer walk but only be pushed in a wheel chair. With the illegal eviction she lost all her houses, household properties, could not access her gardens, sanitary facilities etc and literally became a destitute. She was exposed to humiliation, pain and embarrassment and became traumatised. All that she had worked for and saved over the years had been destroyed and or grabbed. Even if she were to be compensated for the lost and or destroyed properties she cannot be put back in the same but probably near state of the life she enjoyed. For all this time the plaintiff, for no fault of hers, has been in and out of Courts of law and hiring lawyers to rescue her property. At her age and with that health condition all the hope to work for new things/ property is gone.

[46] For all this suffering and inconvenience the plaintiff's counsel has prayed for a sum of UGX.120, 000,000 as general damages. Whereas I am in agreement with counsel that indeed the plaintiff has faced grave injustice over the years and endured excruciating pain as a result, I feel that a sum of UGX. 70,000,000 would be suitable as general damages in these circumstances.



[47] The plaintiff has also prayed for an eviction order against the defendants. Clearly, the defendants are trespassers having gained vacant possession of the suit land through illegal orders purporting to originate from anon-existence or dismissed case to which the plaintiff was not even a party. The High court in **MA-045-2016** set aside the magistrate's court orders and maintained the status quo on the suit land

[48] Evidence shows that the defendants are not physically living on the suit land but deployed SARASEN security guards to guard it. The defendants, their agents and or servants and assignees should vacate the suit land and handover vacant possession to the plaintiff. A permanent injunction as prayed by the plaintiff is hereby issued against the defendants, agents and or servants and assignees.

[49] In conclusion, I find that the plaintiff has proved her case on a balance of probabilities and judgment is hereby entered against all the defendants jointly and severally as follows:

- i. that the defendants are declared trespassers on Isingiro Block 2 Plot 49 duly registered in the names of the plaintiff.*
- ii. that the plaintiff is awarded special damages of UGX. 100,000,000/=*
- iii. that the plaintiff is awarded a sum of UGX. 60,000,000/= as compensation for the destroyed house and kitchen unit.*
- iv. that the defendants hand over vacant possession of the suit land to the plaintiff within 30 days from the date hereof failing which an eviction order shall issue against them.*
- v. that a permanent injunction is hereby issued against the defendants, their agents, servants and or assignees.*



- vi. that the plaintiff is awarded general damages of UGX.
70,000,000/=
- vii. that the plaintiff is awarded costs of the case.

Dated signed and delivered at Mbarara this 16th day of February 2018


.....
Duncan Gaswaga
Judge