5 The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Appeal No. 45 of 2021

(Arising from the Chief Magistrate's Court Civil Suit No. 0084 of 2021)

10

Bingi Yolam :: Appellant

Versus

Gladys Wamala ::: Respondent

15

Before: Hon. Justice Dr. Henry Peter Adonyo

Judgement

1. Background:

This appeal arises from the judgement and orders of the Chief Magistrate's
20 Court of Soroti at Soroti delivered on the 8th day of February, 2018 by His Worship Kaiza E. Abdallah.

The respondent filed Civil Suit No. 0084 of 2021 against the appellant for recovery of Plot No. 7 Amuria Road in Soroti Municipality and she sought for an order that the suit land belongs to her, a declaration that the
25 defendant/appellant has trespassed on the suit land, a permanent injunction restraining the defendant or his agents from further trespass, an order for vacant possession against the defendant/appellant and costs of the suit.

The respondent averred that she purchased the suit land from one Robina
30 Namataka in 2005 at UGX 3,200,000 in an agreement date 25/02/2005

and that thereafter she applied for a leasehold title from Soroti District Land Board which she got on 8th February, 2012 for a period of 49 years. That after occupying the suit land, the appellant showed up in 2011 complaining that the respondent had fenced off part of his land, which now forms the disputed portion.

She averred that the defendant trespassed on the suit property and constructed thereon without her consent.

The appellant in his Written Statement of Defence denied the respondent's claims and contended that the suit land Plot No. 7 Amuria Road falls on two pieces of land one which was previously owned by Robina Namataka which she sold to the respondent which is greater piece but that some small portion belonged to the appellant's /defendant's family.

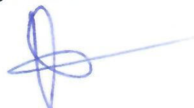
The appellant/defendant thus denied trespassing on the suit land and averred that even though the respondent obtained a 49-year lease over the same property, that said lease is encumbered by interests of the appellant's /defendant's family and that it is the respondent who refused to compensate the appellant's /defendant's family in order to fully incorporate the suit land to Plot 7 Amuria road.

2. <u>Issues for determination before the Trial Magistrate:</u>

i). Whether the plaintiff has exclusive interest in the property?

ii). What are the remedies available to the parties?

The Trial Magistrate determined the above issues in favour of the plaintiff/respondent and declared that the suit land belongs to the respondent, declared the defendant/appellant a trespasser though he awarded him UGX 2,000,000 as compensation for his piece of land within



5 the suit land which he held was limited to the edge of the suit land, ordered for the defendant/appellant to vacate the suit land immediately upon compensation of UGX 2,000,000 from the respondent/plaintiff and also issued a permanent injunction against the defendant/respondent from interfering with the suit land. Each party was ordered to bear their costs.

10 3. Grounds of Appeal:

Dissatisfied with the judgement, the defendant/appellant appealed on the following grounds contained in the Memorandum of Appeal dated 11th November, 2021:

i. That the Learned Trial Magistrate erred in law and in fact when he
15 held that the Appellant was not disputing the lease offer and declared the Respondent the legal owner of the suit land.

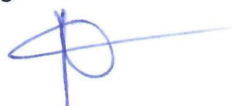
ii. That the Learned Trial Magistrate erred in law and in fact when he held that the Appellant had committed an act of trespass on the suit land.

20 iii. That the Learned Trial Magistrate erred in law and in fact when he held that the Appellant's interest in the suit land was limited to the small house in the corner of the suit land and therefore the Appellant's house had been constructed illegally.

iv. That the Learned Trial Magistrate erred in law and in fact when he
25 held that the plaintiff's land in dispute is about a tenth of plot 7, Amuria road, Soroti Municipality.

v. That the Learned Trial Magistrate erred in law and in fact when he ordered compensation of only UGX 2,000,000 to the plaintiff.

vi. That the Learned Trial Magistrate erred in law and in fact when he
30 totally failed to subject the entire evidence on record to sufficient scrutiny and thus arrived at a totally erroneous decision.



5 4. Duty of the first appellate court:

In ***Kifamunte Henry vs Uganda SCCA No. 10 of 1997***, it was held that;

> ***"The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate court must then make up its own mind not disregarding the judgement appealed from but carefully weighing and considering it."***

10

In ***Father Nanensio Begumisa and three others vs Eric Tiberaga SCCA 17 of 2000; [2004] KALR 236***, it was held;

15

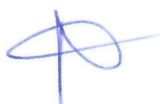
> ***"This being a first appeal, this court is under an obligation to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion."***

20

The above legal positions in regard to the power of a first appellate court are taken into consideration in resolving this appeal.

Parties herein through their counsels, that is M/s Okuku & Co Advocates for the Appellant and M/s Engulu & Co Advocates for the Respondent, filed written submissions, the content of which together with the pleadings, judgment and orders of the lower court are considered herein in disposing of this appeal.

25



5. Resolution of the Appeal:

a. Ground 1:

That the Learned Trial Magistrate erred in law and in fact when he held that the Appellant was not disputing the lease offer and declared the Respondent the legal owner of the suit land.

Counsel for the appellant submitted that the appellant was disputing the lease offer right from the appellant's pleadings contrary to the conclusion of the trial magistrate.

Counsel for the appellant submitted that under paragraph 5 of his written statement of defense, he stated that the respondent's lease offer is encumbered by the appellant/defendant's family interest in the suit plot which in essence meant that the appellant was disputing the lease offer to the respondent whose offer included the piece of land the appellant is claiming.

Counsel for the respondent submitted that the Trial Magistrate on page 3 of his judgement indicated that the dispute was for a portion of land which was found to be a tenth of plot 7 Amuria road, Soroti Municipality unlike the appellant's dispute of the lease offer to the respondent.

Counsel further submitted that according to page 2 of the judgement, the trial magistrate found that the appellant did not plead fraud to impeach the respondent's lease offer offers of plot 7 Amuria Road by Soroti District Land Board to the plaintiff.

Counsel added that the courts have since held that fraud entails personal dishonesty or moral turpitude on the part of the registered owner and that fraud though not explicitly pleaded may be inferred from the facts alleged

5 in the pleadings. See: ***Katumbe Byaruhanga versus Edward Kyewalabye Musoke CACA No.2 of 1998*** and ***Naluwoga Teddy Nalongo Ssewamala versus Josephine Nansukusa and others HCCS No. 17 of 2011.***

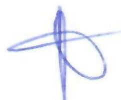
Counsel further asserted that the appellant in his written statement of
10 defence under paragraph 4 and 5 contended that the respondent's lease offer was encumbered by the defendant's /appellant's family interest and that the respondent purchased the suit land and acquired the lease offer with full knowledge of the said interest of the appellant. That it is apparent that from the appellant's facts in the pleadings that he was claiming that
15 the respondent's acquisition of the suit plot was fraudulent let alone it can be inferred.

Counsel concluded that in any case the lease title (if any), could not have been impeached by the appellant since the Magistrate Grade One court lacks jurisdiction to cancel a certificate of title as per section 177 of the
20 Registration of Titles Act, Cap 230, therefore, counsel for the appellant submitted that the appellant could not have been expected to state more than to claim interest in the suit plot over which the respondent's lease offer covered.

Counsel for the respondent in reply stated that it is a well settled position
25 of the law that fraud must be specifically pleaded and proved.

From the arguments above, I am more inclined to agree with counsel for the respondent that fraud has to be specifically pleaded pursuant to **Order 6 rule 3 of the Civil Procedure Rules** which provides that;

"In all cases in which the party pleading relies on any
30 **misrepresentation, <u>fraud</u>, breach of trust, willful default or undue influence, and in all other cases in which particulars may**



5 **be necessary, the particulars with dates shall be stated in the pleadings." (Emphasis Mine)**

In the case of B.***E.A Timber Co. vs Inder Singh Gill [1959] EA 463***, Forbes V.P held:

> ***"It is of course established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. Fraud however is a conclusion of law. If the facts alleged in the pleading are such as to create a fraud, it is not necessary to allege the fraudulent intent. The acts alleged to be fraudulent must be set out and then it should be stated that these acts were done fraudulently but from the acts fraudulent intent may be inferred."***

10

15

Furthermore, in ***Okello vs. Uganda National Examinations Board CA No. 12 of 1987 reported in [1993] II KALR 133 at 135***, Lubogo Ag. JSC held that the provisions of Order 6 rule 3 of the CPR is mandatory in that the particulars of fraud and dates regarding the alleged fraud should be given.

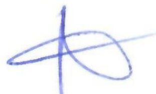
20

Still, in the case of ***Kampala Bottlers Ltd versus Damanico (U) Ltd Civil Appeal No. 22 of 1992***, Hon. Justice Platt JSC held and I quote at page 5 of his judgment:

25

> ***"In the first place, I strongly deprecate the manner in which the Respondent alleged fraud in his Written Statement of Defence. Fraud is very serious allegation to make; and it is; as always, wise to abide by the Civil Procedure Rules Order VI Rule 2 and plead fraud properly giving particulars of the fraud alleged. Had that***

30



been done, and the Appellant had been implicated, then on the Judge's findings that would have been the end of the Defence. If, on the other hand, the officials had been implicated, then on the usual interpretation of Section 184 (c) of the Registration of titles Act, that would have been found to be insufficient." (Emphasis added)

Wambuzi CJ in the same above case was of the view that ***"normally, where fraud is pleaded, particulars of the fraud must be given."***

Arising from the above holdings, it can be seen that where a fraud is pleaded, it is a legal requirement that the particulars of fraud is pleaded and demonstrated.

Accordingly, I would conclude that it is trite law that fraud should be specifically pleaded and proved. When a claim is based on fraud it must be specifically so stated in the pleading, setting out particulars of the alleged fraud, and those particulars must be strictly proved. The pleading must explicitly disclose the facts which, if proved strictly, would constitute fraud.

See: ***Tifu Lukwago vs Samwiri Mudde Kizza & Another Civil Appeal No. 13 of 1996 (SC).***

Counsel for the appellant submitted that the trial magistrate on pages 2 and 3 declared the respondent the legal owner of the suit plot on the strength of a lease offer and before due compensation from the respondent which raises eyebrows.

Counsel submitted that it is well known that only registered interest gives legal title and not merely an offer for a registered interest as it is in the instant case.

5 Counsel indicated that under **Article 26(1) and (2) (i) of the Constitution of the Republic of Uganda** read with the case of ***Law Development Center versus Dan Wasswa Serufasa HCCS No. 724 of 2003*** are to the effect that every person has an inalienable right to own property and no person is to be deprived of their property before 10 prompt payment of fair and adequate compensation, prior to taking of possession or acquisition of the property.

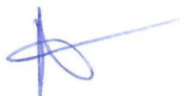
Counsel concluded that the trial court's declaration of the respondent as the sole legal owner of the suit property before adequate compensation to the appellate and his family for their interest in the suit property is an 15 affront to the Constitutional provisions stated above.

Counsel for the respondent in reply submitted that in arriving to the conclusion that the appellant did not dispute the respondent's lease offer, the trial magistrate considered the appellant's defence in entirety wherein he did not dispute the lease offer granted to the respondent.

20 I agree with the submission of counsel for the respondent that all that the appellant stated in paragraph 5 of the written statement of defense was that the lease offer to the respondent was encumbered by his interest with appellant not actually disputing the lease offer. Accordingly, I would conclude that the trial magistrate arrived at the right conclusion when he 25 held that the Appellant was not disputing the lease offer and declared the Respondent the legal owner of the suit land.
This ground of appeal thus fails.

b. Ground 2:

That the Learned Trial Magistrate erred in law and in fact when he held 30 *that the Appellant had committed an act of trespass on the suit land.*



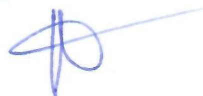
Counsel for the Appellant submitted that the suit land is plot No. 7 of Amuria road, Soroti Municipality. The appellant argued at the trial in the lower court he pointed out that the said plot covered two pieces of land, that is, one owned by the respondent's vendor (Robina Namataka) and the other owned by the appellant's family measuring 33 meters north, 33 meters south, 12 meters east and 5 meters west with these lands being adjacent to each other.

Counsel submitted that the respondent had fenced off his part too. The appellant testified that he inherited the land from his parents and it is ancestral land.

Counsel submitted that there were two houses on his piece of land; one built by his parents in 1966 and the other by himself in 2014. Counsel for the appellant submitted that the respondent's vendor Robina Namataka was his neighbor before the municipal authorities started mapping and creating plots in the area and that plot 7 Amuria Road (now the suit plot) came about after demarcation by the municipal authorities and that he had no authority over the process that merged his land and Robina Namataka's land that now form the suit property.

Counsel for the appellant stated that the appellant had asked for UGX 4,500,000 in compensation for his piece of land from the respondent but the respondent refused to pay. Counsel submitted that the respondent from her evidence told the lower trial court that she tried to resolve the dispute by offering UGX 1,000,000 to the appellant but the appellant rejected the same with this piece of evidence further supporting the appellant's claim that indeed plot 7 Amuria road included his piece of land.

Counsel for the appellant submitted that the trial magistrate held that since the appellant had constructed the new structure in the middle of the



5 plot against the advice of the then Soroti Municipal Counsel authorities, he was a trespasser.

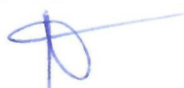
Counsel submitted that the trial magistrate did not establish whether the structure constructed by the appellant was on the piece of land measuring 33 meters north, 33meteres south, 12 meters east and 5 meters west. That 10 the trial magistrate adjudged the appellant a trespasser because his structure had not been approved by the Municipal authorities after a complaint to them by the respondent which was erroneous.

Counsel for the respondent in reply to this ground submitted that in ***Justine E.M.N Lutaaya vs Stirling Civil Engineering Company*** 15 ***SCCA No. 11 of 2002***, trespass was defined as unauthorized entry upon land that interferes with another person's lawful possession of that land.

Counsel submitted that it is not in dispute that at the time the respondent filed the suit in 2014, she had acquired a lease offer and taken possession of the suit land. Counsel further submitted that it therefore followed that 20 any activity done on the suit land without permission of the respondent automatically amounted to trespass as long as the respondent was in possession and not the appellant.

Counsel for the appellant in rejoinder submitted that it was the respondent who was in trespass when she secured a lease offer covering 25 the whole suit plot which included a portion measuring 33 meters north, 33 meters south, 12 meters east and 5 meters west which was owned by the appellant without any compensation.

Counsel submitted that the appellant had every right to resist any such unauthorized takeover of his portion within the suit land by the 30 respondent and demand vacant possession since his claim was never challenged in evidence at trial.



5 Counsel for the appellant in rejoinder cited the case of ***Adrabo Stanley vs Madira Jimmy HCCS No. 00244 of 2013*** where Stephen Mubiru, J held that trespass to land occurs when a person directly enters upon another's land without permission and remains upon the land, places or projects any object upon the land. The Hon. Justice observed that, an out 10 of possession owner of land may on the basis of constructive possession, even with no physical contact with the land, may recover for an injury to the land by a trespasser which damages the ownership interest.

My observation is that at page 3 of the judgement of the trial court, the respondent/ plaintiff is stated to have testified that she bought the suit 15 land from Robina Namataka with mark stones already planted on the land and only came to know the defendant/appellant in 2011 when he laid claims on part of the suit land to be his and that he was not staying on the same land and that in 2014, the appellant started building until when the town council authorities of Soroti stopped appellant upon complaint of 20 the respondent.

Still, the trial magistrate still on page 3 of the judgement stated that Namataka Robina (PW3) from whom the respondent bought from testified that the appellant was not on the land by the time she sold the land to the respondent.

25 It was also the finding of the trial court that the portion of land in dispute was about a tenth of plot 7 Amuria road and not the entire plot 7. Furthermore, the trial magistrate concluded on page 4 of the judgement that the appellant's/defendant's family occupied a small house at the edge of the suit land but never used or occupied the whole suit land and that 30 the appellant's equitable rights were only limited to the small house in the corner or edge of the suit land not the whole suit land and that the other

5 house constructed in 2014 in the middle of the land was constructed illegally.

Accordingly, the trial magistrate found that the legal interest of the respondent took precedence of the equitable interest of the appellant as such and declared the respondent the owner of plot 7 Amuria road and 10 that since the appellant had been stopped from constructing on the suit land by the Soroti municipal authorities and he had insisted to continue, that was an act of trespass.

It is the submission of the counsel for the appellant that it was a grave misdirection of trial magistrate when he relied on the evidence of the 15 planning authority that had disallowed construction of one of the houses of the appellant on the suit property to limit the appellant's portion to the end corner of the suit property without the involvement of surveyors to establish the exact size of the suit land.

Trespass to land has in the case of ***Onega Obel and Anor vs. the*** 20 ***Attorney General & Anor HCCS 006 of 2002*** been held to consist of the following unjustifiable acts;

a) Entering upon the land in possession of another,
b) Remaining upon such land, or
c) Placing any material object upon it.

25 In the same case it was also observed that trespass by wrongful entry consists of entry by a defendant or by some other person through his procurement, into land or building occupied by a plaintiff. It was also held therein by Hon Augustus Kania that, ***"It is trite law that tort of trespass is interference with right of occupation and not the*** 30 ***interference with ownership, ownership alone***

5 ***unaccompanied by possession is protected by different remedies..."***

The law on trespass to land was clearly stated in the case of ***Justine E.M.N. Lutaaya vs. Stirling Civil Engineering Company Civil Appeal No. 11 of 2002 (SC).*** In that case, Mulenga JSC held:

10 ***"Trespass to land occurs when a person makes an unauthorised entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that land. Needless to say, the tort of trespass to land is committed, not against the land, but***
15 ***against the person who is in actual or constructive possession of the land. <u>At common law, the cardinal rule is that only a person in possession of the land has capacity to sue in trespass</u>. ... Where trespass is continuous, the person with the right to sue may, subject***
20 ***to the law on limitation of actions, exercise the right immediately after the trespass commences, or any time during its continuance or after it has ended. Similarly, subject to the law on limitation of actions, a person who acquires a cause of action in respect of trespass to land,***
25 ***may prosecute that cause of action after parting with possession of the land."*** *(Emphasis mine)*

Citing the case of ***Wuta-Ofei v Danquah [1961] 3 All E.R.596 at p.600***, his lordship held that for purposes of the rule cited in ***Justine E.M.N. Lutaaya vs. Stirling Civil Engineering Company*** (supra)
30 above, possession did not mean physical occupation; rather, the slightest amount of possession would suffice. In ***Wuta-Ofei v Danquah*** (supra) the Privy Council put it thus:

5 ***"Their Lordships do not consider that, in order to establish possession, it is necessary for the claimant to take some active step in relation to the land such as enclosing the land or cultivating it."***

In order to sustain an action in trespass, the respondent/plaintiff must 10 have been in possession of the suit land. In the instant matter, the trial court while at locus found that the land in dispute was about a tenth of the suit land and not the entire plot 7.

The trial court further noted on page 4 of the judgment, the trial magistrate concluded that the appellant's/defendant's family occupied a 15 small house at the edge of the suit land but never used or occupied the whole suit land and that the appellant's equitable rights were only limited to the small house in the corner or edge of the suit land not the whole suit land and that the other house constructed in 2014 in the middle of the land was constructed illegally.

20 The trial magistrate then went on to hold that given the above scenario the legal interest of the respondent took precedence over the equitable interest of the appellant and accordingly declared the respondent the owner of plot 7 Amuria road and that since the appellant had been stopped from constructing on the suit land by the Soroti municipal authorities and 25 he had insisted to continue, that that was an act of trespass.

Since to sustain a matter in trespass, the plaintiff has to be in actual possession, it is without contention that the respondent was in occupation/possession of the suit land (plot 7, Amuria road) by the time the appellant built the house in 2014 and also unlike the appellant where 30 evidence was led albeit uncontroverted that by the time the vendor Robina Namataka sold the land to the respondent, the appellant was not in possession. Also the other elements of trespass as noted in the cited case

5 of ***Onega Obel and Anor vs. the Attorney General & Anor*** for instance, remaining on the land, and placing any material object upon it, the trial magistrate at page 3 noted that during *locus in quo*, it was observed that there were two constructions claimed by the defendant, one that looked recent and built in 2014 at the same time when Soroti 10 Municipal council issued a notice to the defendant to stop construction, it was the house built in 2014 that was place onto plot 7 Amuria road that was in contestation.

Even though the trial magistrate found that the defendant's family was in occupation of the small house on the edge, the appellant never occupied 15 the whole suit land which was in possession of the respondent, and that equitable interests are subject to legal interests.

Accordingly, given the evidence on record, it is my finding that the trial magistrate was right to conclude that the appellant trespassed on plot 7 Amuria road of which the respondent was in possession of. This ground of 20 appeal fails.

c. Ground 3 and 4

Ground 3 and 4 shall be considered together because they are similarly worded. Thus;

- *Ground 3: That the Learned Trial Magistrate erred in law and in* 25 *fact when he held that the Appellant's interest in the suit land was limited to the small house in the corner of the suit land and therefore the Appellant's house had been constructed illegally.*
- *Ground 4: That the Learned Trial Magistrate erred in law and in fact when he held that the plaintiff's land in dispute is about a tenth* 30 *of plot 7, Amuria road, Soroti Municipality.*

5

The counsel for the appellant submitted that according to the appellant during cross examination, his piece of land included in plot 7 Amuria road measured 33 meters north, 33 meters south, 12 meters east and 5 meters west which sits two houses, one constructed by his parents in 1966 and

10 the other by himself in 2014 which information the appellant's counsel argues were confirmed by the court during locus in quo. The counsel for the appellant, argues however, the trial magistrate held that the portion of land on which the structure constructed by the appellant in 2014 does not belong to the appellant.

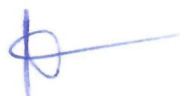
15 Counsel for appellant further submitted that the trial magistrate did not establish the size of the land that the appellant was claiming thus, he argued that it was erroneous for the trial magistrate to hold that the appellant's land within plot 7 Amuria road was limited to the small house in the corner of the suit plot unsupported by evidence on court record.

20 Counsel for the respondent in reply submitted that the appellant did not plead the size of his land that had been allegedly annexed by the respondent on plot 7, Amuria road and that also during the appellant's testimony in chief of the appellant, he was silent about what size of the land that he claimed. Counsel for the respondent submitted that the size

25 of the land only came out during cross examination of the appellant which was also done without proof.

Counsel thus concluded that since there was no evidence led by the appellant to prove the actual measurements of the disputed portion, he found no fault in the finding of the trial magistrate of estimating the

30 disputed portion as a tenth of plot 7 Amuria road since the definite size was not known. Counsel for the respondent submitted that it was just and proper for the trial magistrate to rely on PEX 5 and PEX 7 from the



5 planning authorities to find that the appellant's building was illegal in purview of Section 33 of the Physical Planning Act, 2010.

From the pleadings in respect of this suit, I find that the appellant did not plead the actual size of the portion which he claims was part of the suit land but it only brought out the same during cross examination with
10 counsel for the appellant submitting that the trial magistrate ought to have established the actual size of the appellant's claimed portion.

In ***Trojan & Co. Ltd vs Rm. N. N. Nagappa Chettiar (1953) AIR 235, 1953 SCR 780,*** the Supreme Court of India held that "***it is well settled that the decision of a case cannot be based on grounds
15 outside the pleadings of the parties and it is the case pleaded that has to be found.***

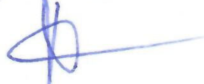
Whereas the above cited case is not Ugandan one, I find it persuasive in that it states that facts must be pleaded.

Furthermore, it is trite law that parties are bound by their pleadings as per
20 *O.6 r 7 of the Civil Procedure Rules.*

This position was reaffirmed in the cases of ***Jani Properties Ltd versus Dar-es-Salaam City Council (1966) EA 281; and Struggle Ltd versus Pan African Insurance Co. Ltd (1990) ALR 46 -47,*** wherein Court rightly observed that;

25 > *"Parties in Civil matters are bound by what they say in their pleadings which have the potential of forming the record moreover, the Court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them. No party can be allowed to depart from its pleadings"*

30 See also: ***Semalulu versus Nakitto High Court Civil Appeal No. 4 of 2008.***



In this case the Appellant, as has already been noted by this Honourable Court did not plead the actual size of the portion he claimed but only testified about the actual size during cross examination moreover without proof.

I would thus agree with counsel for the respondent that it was therefore not open to the Trial Magistrate to entertain anything else other than investigating whether the appellant indeed had an interest in the suit land which he rightly held and colluded that what the appellant had in the suit land was an equitable interest.

As such, I find that to depart from the parties' pleadings and the wondering into other facts that arose during cross examination would be irregular.

There is, however, some jurisprudence to the effect that where a departure from pleadings is revealed in the course of the trial and both parties submit on unpleaded points, then it is proper to deal with such an irregularity while dealing with one of the issues framed.

See: ***Lukyamuzi versus House & Tenants Agencies Ltd [1983] HCB 74*** and ***Ajok Agnes versus Centenary Rural Development Bank Ltd HCCS No. 722 of 2014***.

The position here, however, not the case here for the record shows that the Plaintiff/Respondent submitted only in absence of the specific measurements, moreover even the plaintiff during examination in chief submitted did not indicate the actual size of the land claimed.

It would therefore, be prejudicial to the Respondent for this Court to indulge into other matters not put to the respondent's notice.

In the case of ***Ms. Fang Min versus Belex Tours & Travel Ltd.,*** the Supreme Court, at Page 27, underscored the importance of the

5 pleadings. It held that pleadings must describe precisely the respective cases of the parties and must define the issue in dispute for resolution by the Court.

In the result, I do find that the trial magistrate was right to find that the appellant's interest in the suit land was limited to establishments
10 indicated in the judgement.

In regard to ground 4;

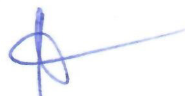
Counsel for the Appellant submitted that the appellant claimed land measuring 33 meters north, 33 meters south, 12 meters east and 5 meters west.

15 Counsel submitted that the trial magistrate did not establish the tenth he referred to as belonging to the appellant and he did not require the appellant to show him at locus the boundaries of his piece measuring 33 meters north, 33 meters south, 12 meters east and 5 meters west which the appellant claimed.

20 Counsel for the respondent submitted that the estimation of the appellant's portion of land within the suit land was out of pure conjecture and that it left for court to simply estimate the size of the appellant's land yet the actual size could easily be established.

Since court has already stated that ground 3 and 4 were considered
25 together, I will only hasten to reiterate that the actual size of the appellant's claim as measuring 33 meters north, 33 meters south, 12 meters east and 5 meters west was only disclosed during cross examination and upon perusal of the record, no proof of was found on lower court file as to its exact nature, therefore the procedure used by the
30 trial judge at locus is not at fault.

Therefore, ground 3 and ground 4 fail.



5 d. <u>Ground 5 and 6:</u>

Grounds 5 and 6 shall be discussed together.

- *Ground 5: That the Learned Trial Magistrate erred in law and in fact when he ordered compensation of only UGX 2,000,000 to the plaintiff.*
- <u>Ground 6:</u> *That the Learned Trial Magistrate erred in law and in fact when he totally failed to subject the entire evidence on record to sufficient scrutiny and thus arrived at a totally erroneous decision.*

10

Counsel for the appellant submitted that the trial magistrate ordered the appellant to be compensated in the meager sum of UGX 2,000,000 with the reasoning that the appellant was a trespasser and that he had earlier on requested for UGX 4,500,00 as compensation for his interest in the suit plot.

15

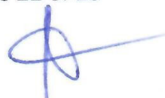
Counsel for the appellant submitted that the trial magistrate ought to have ordered compensation to the appellant prior to the takeover by the respondent and subject to a valuation by a government accredited valuer and at the current market value at the time of judgement.

20

Counsel for the appellant submitted that the trial magistrate issued a permanent injunction against the appellant before subjecting the same to compensation ordered is a further violation and grave violation of the appellant's right to own property enshrined under Article 26 of the Constitution of the Republic of Uganda, 1995.

25

Counsel for the respondent submitted in reply that the appellant did not provide any evidence of the value of land which was disputed neither did



5 he suggest in his defence the amount of money he wanted to be compensated with.

Counsel for the respondent further stated that with no such information, the amount of compensation to be given was left to the discretion of the trial court. That the trial magistrate having visited the disputed land and
10 saw the size, awarded what he deemed appropriate and thus should not be faulted for awarding what he felt was sufficient.

Counsel for the respondent further submitted that the appellant has not in this appeal justified why he deserved more than what he was awarded by the trial court and neither did he at the lower court, produce any
15 evidence to suggest what he ought to have been compensated with.

I am inclined to agree with counsel for the respondent and do hold that the appellant did not provide any evidence of the value of the land which he claims to the trial court and neither did he suggest the amount of compensation even though he hinted on the said compensation in his
20 written statement of defence (paragraphs 8 and 10).

Under Sections **101, 102 and 103** of the **Evidence Act**, Cap 6, whoever asserts a fact must prove it. That provision of the law clearly stipulates that:

> **Whoever wants Court to believe in the existence of a given**
25 > **set of facts must have the burden to prove their existence.**

The standard of proof in all civil cases is one that is on the balance of probability.

It is also well settled law that an appellate court will always be reluctant to interfere with a finding of fact arrived at by a trial court and will only do
30 so when, after taking into account that it has not had the advantage of

5 studying the demeanour of the witnesses, it comes to the conclusion that the trial court is plainly wrong.

See: ***Kasifa Namusisi & Others vs Francis M.K. Ntabaazi Civil Appeal No. 4 of 2005 (SC), Jiwan Vs Gohil (1948) 15 EACA 36*** *and* ***R.G. Patel Vs Lalji Makaiji [1957] EA 314***.

10 I would therefore not interfere with the compensation amount that the trial magistrate envisaged. Grounds 5 and 6 fail.

Grounds Five and Six equally fail.

6. Conclusion:

In the final result, arising from my conclusion on grounds 1,2,3, 4, 5 and
15 6, this appeal fails and it is accordingly dismissed with costs to the respondents.

7. Orders:

- This appeal is dismissed.
- The Judgment and orders of the lower trial court are confirmed.
- 20 The cost of this appeal is awarded to the respondent in any event.

I do so order.

....

Hon. Justice Dr Henry Peter Adonyo

25 Judge

4th October 2022