

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT LIRA

CIVIL SUIT NO. 104 OF 2001

OTIM RAYMOND :::PLAINTIFF

VERSUS

OCEN NICHOLAS AND

41 OTHERS :::DEFENDANT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

JUDGMENT

- [1] The plaintiff filed this suit jointly and severally against the defendants for recovery of land comprised in leasehold Register Volume 2679, Folio 14, Plot 7 Block 3, situated at Adyeda, Acarpai, Loro, Oyam District, measuring 132 hectares. The plaintiff is the registered proprietor of the suit land, being the administrator of the estate of his late father John Elu, the original proprietor of the suit land.
- [2] The plaintiff contended that from 1994 or thereafter, the defendants jointly and or severally forcefully entered onto the suit land and have illegally cultivated and constructed



structures/ houses thereon. The defendants have continuously occupied the suit land despite repeated demands by the plaintiff to vacate the same. The plaintiff sought for an eviction order to issue against the defendants, an order of permanent injunction against the defendants and/ or their agents from interfering with the suit land, mesne profits, general damages, interest at 25% p.a and costs of the suit.

[3] In the joint written statement of defence (WSD), the defendants asserted that they have occupied and lived on their respective portions of the suit land since the 1970s. The plaintiff's late father owned some portion of the suit land but not the entire 132 hectares as presented in the title deed. They contended that the certificate of title was procured through fraud and sought cancellation of the same.

[4] At the scheduling the agreed facts were;

- 1. The plaintiff is currently the registered proprietor of the land in dispute.***
- 2. That the suit property is located at Adyeda Parish, Loro sub county, Oyam District.***
- 3. That the suit property is 132 hectares.***
- 4. That the plaintiff is the administrator of the estate of the late John Elu, the original owner.***
- 5. That the defendants are in occupation of the suit land.***

[5] The agreed issues for determination by the court are;

- 1. Whether the plaintiff is the lawful owner of the suit land.***



2. Whether the plaintiff obtained the said certificate of title fraudulently.

3. Remedies available to the parties.

- [6] The plaintiff was represented by Ms. Rebecca Athieno and Mr. Omara Atubo while Ms. Shamim Amolo appeared for the defendants.

Issue 1: Whether the plaintiff is the lawful owner of the suit land.

- [7] **The plaintiff testified as PW1.** He stated that his late father (Elu John) obtained title in 1984 for the initial lease period of 5 years. Following his demise, PW1 obtained letters of administration the basis of which he caused the certificate to be transferred/ registered in his names on the 7-04-2000 for an extended period of 49 years. His late father had started the process of leasing the land in 1972 but was disrupted by the political instability in the country during the seventies. PW1 further testified that the land was bushy and unoccupied at the time and was inspected by the then District Land Committee. None of the defendants were present since they were not in occupation of the suit land. The first survey was conducted in 1984. His father passed away in 1988 whereupon the defendants started encroaching on the suit land in 1994.
- [8] **Okello Nasuru (PW2)** informed court that the late Elu John applied for the suit land in 1972 while he (PW2) was a member of the District Land Board. There was a delay in inspecting the



land until 1981 when their committee visited the area. A number of people were present and none raised any objection as revealed by PE6 (Inspection Report on Application for Rural Land). The said exhibit shows the land was free and devoid of customary occupancy / tenants.

- [9] The evidence of **Koloneriyo Edule Ongom (PW3)** was that in 1969 late Elu John approached him asking for land. He (PW3) showed him the suit land that was vacant and bushy. Elu John decided to settle on the land and embarked on having it leased. He was present when the District Land Board inspected the land. Ocen Albino (PW4) stated that he knew the suit land quite well, having been a village chief of Adyeda village, where the land is located. The area is currently known as Acanpii. He accompanied the sub-county chief when officials of the District Land Board inspected the land for Elu John. By the time the latter acquired the land it was vacant, bushy and inhabited by wild animals. The plaintiff (PW1) was still young and in school at the time the land was inspected.
- [10] The evidence of **Tom Ogwong Awaa (DW1), the 2nd defendant**, is that Elu John came to the area as a visitor in 1974 and rented a building near Lira-Kamdini Road. Thereafter he requested DW1's father, the late Cirino Awaa Odongo, for a piece of land to settle and was given forty (40) acres. He was present at the time of the giving of the land. He (DW1) got married in 1983 and his father gave him a piece of land adjacent to the plaintiff's land.



DW1 further testified that he was not informed about the process of surveying the land or that the plaintiff had acquired title.

- [11] **Okwir William (DW2)** testified that when Elu John came to the area, he befriended his father, Alok Emanuel and that of Awaa (DW1). Each of them (fathers) gave Elu John twenty (20) acres of land. In 1987 Elu John sued Alok Emmanuel and seven other people at Anyeke court over the same land. He (Elu) lost the case and lived peacefully with his neighbors thereafter. Okello Reberebe John Charles (DW3), the 25th defendant, informed court that he bought three (3) acres of land from Opete John and Ayoo Nelson in 1976. By that time Elu John had settled in the area and his land measured one hundred (100) acres. He (DW3) erected his first house on the land in 1976 without any objection and occupies the same land to the present day. He was not informed/aware the land was surveyed and title issued to the plaintiff.
- [12] **Faustino Opuddu (DW4), 41st defendant**, testified that he occupies four (4) acres of the suit land which he acquired in 1985 while a pupil at Iyany Primary School. His father bought him two acres and later he (DW4) bought another two acres from different people. He made a sale agreement with one of the vendors, one Etuku, but did not know the plaintiff's father and refuted the plaintiff's claim of ownership of land in the area. He was not aware his land was part of the plaintiff's titled land. **Apili Teresa (DW5), 19th defendant**, testified that she acquired land measuring five gardens in 1984 through purchase from Alunyu

Silvesto. Elu John was settled in a different village known as Tedan, about one & half kilometers away. She has since subdivided the land among her four children and was not aware it forms part of the plaintiff's title.

[13] **John Livingstone Yakobo Obete Ogwang (DW6)** told Court the entire suit land used to belong to Adupe William, his grandfather. He knew all the defendants and it was his family that freely gave the defendants their respective portions of the suit land. They did not pay anything. The plaintiff's father, Elu John settled on an area measuring three acres (3) only. He was given the land by Awa Cesirino and Alok Emmanuel. In 1983 Elu John tried to grab other people's land but was resisted. This resulted in the arrest of DW6 who was taken to Anyeke Court but the case was eventually decided in his (DW6) favour.

[14] By agreement of Counsel for both sides, **Okwir William (DW2)** was recalled to the witness stand. He testified that he knew all the defendants and how they acquired their respective portions of the suit land. His evidence regarding the other defendants who did not testify can be summarized as follows;

- 1. Ogwang Ismael (7th defendant) was given one acre by Alok Emmanuel in 1981 and still occupies the same.*
- 2. Ocara Tito (8th defendant) was also given one acre of land by Alok Emmanuel in 1983. The said Ocara Tito was about 42 years of age by the time DW2 testified upon recall (2015).*
- 3. Agong Lusano (9th defendant) owns three (3) acres given him by Alok Emmanuel. Agong was aged 39 years in 2015.*



4. *Omara Peter (13th defendant) also owns three (3) acres given him by Alok Emmanuel. His land borders that of Okwir Bruno on the western side, Ajar Wilson on the eastern side, Ekuny Yuventino on the southern side and Odyang Tonny on the northern side. The land is demarcated by 'Omara-Omara' trees.*
5. *Owiny Vincent (3rd defendant) was given land by Alok Emmanuel measuring two and a half (2 ½) acres. He stays on the land where he erected grass-thatched huts and planted some trees. On the eastern side there is Omara Peter, on the northern side is Agong Lusano (9th defendant) and Okwir William on the western side.*
6. *Alung Benson (Defendant No.40) acquired his land from Alok Emmanuel in the 1980s but has since left it to his brothers and a sister. It borders a main road to the south. Alung Benson was aged about 39 years in 2015.*
7. *Odyang Tommy (Defendant No.10) acquired a portion of the suit land around 1983 from his paternal uncle Odyang Charles.*
8. *Opori Alfred and Opori Franco (11th and 12th defendants respectively) are clan brothers. Each of them was given land by their paternal uncle, Ogong James, in the 1980s.*
9. *Omedi Samuel (15th defendant) acquired his land from Ameto Joel in 1985.*
10. *Alok Emmanuel (DW2's father) freely gave land to the said defendants while others bought from other people of Iyanyi village. By the time Elu John was given land by Alok Emmanuel some of the defendants were already on the suit land, including his (DW2) brothers and uncles.*
11. *Nobody is disputing the twenty (20) acres of the suit land occupied by the plaintiff.*



12. The entire suit land is occupied by the defendants or their relatives who have homes on the same.

- [15] **DW2** Also testified that he did not see any member of the District Land Board visiting the area. He further refuted the plaintiff's evidence and that of his witnesses that the land was vacant at the time Elu John acquired title. He asked Court to dismiss the case and declare the defendants the rightful owners of the suit land.
- [16] Court has carefully considered the evidence of both sides as well as the written submissions of their respective Counsel.
- [17] From the evidence, **the defendants (except No. 41 who is DW4)** do not deny the fact that the plaintiff's father acquired land in the area in the 1970s where he settled. The disagreement is basically on the size of the land and how he acquired it. The plaintiff's claim that it was the entire suit land was strongly refuted by the defendants. A scrutiny of the defence evidence reveals varying accounts regarding the size of land and how Elu John acquired it. According to **DW1 (Tom Ogwang Awaa)** it was his father Cirino Awaa Odongo who gave John Elu fourty (40) acres of land in his presence. DW1's account however varies with that of **DW2 (William Okwir)** who stated that Elu John was given twenty (20) acres by Alok Emmanuel (DW2's father) and the other twenty were given by the father of Awaa Severino, thus making it fourty acres. Another version is contained in the testimony of **DW3 (Okello Reberebe John Charles)** to the effect



that the land for Elu John was over one hundred (100) acres. As for **DW4 (Opudu Faustino)**, the plaintiff did not own any land in the area.

- [18] When he was recalled to the witness stand, **DW2** contradicted his earlier testimony by stating that Awaa Cezerino and Alok Emmanuel gave Elu John only two (2) acres of land. That the plaintiff added on more land to make it twenty acres which are part of the disputed land. Another twist in the defence case was provided by **DW6 (John Livingstone Obete Ogwang)** whose testimony was to the effect that John Elu's land was only three (3) acres. Earlier on, in examination-in-chief, he had stated that the land was given by Cezerino and Alok Emmanuel. During cross-examination he stated thus; *"Elu came to the land in 1974 and he was given three acres by Josi Adwong. I know Awaa Sezerino. I know Alok. They did not give any land to Elu."* **DW6** further contradicted the other defence witness with regard to how the defendants acquired their respective pieces of land. Firstly, he stated that the suit land used to belong to his grandfather **Adupa Ibrahim**. Secondly, that it was the family of Adupa Ibrahim which freely gave the defendants land. For emphasis, I will quote what he stated; *"we are the ones who gave the defendants land freely. They were running away from cattle rustlers. None of them paid us anything. The land was given to them permanently, it was a large area."*

- [19] The above evidence contradicted that of **DW1 (2nd defendant)** who stated the land was given him by his father **Severino Awaa**

Odongo. DW6 also contradicted **DW3 (25th defendant)** who informed court that the land he occupies was sold to him by Opete John and Ayoo Nelson in 1976. The evidence of **DW4 (41st defendant)** is that his father gave him the land after he purchased it from one Opio Salvaton. **DW5 (19th defendant)** stated she purchased the land from Alunyu Silvesto in 1984. As for other defendants who did not testify in person, the evidence as to how they respectively acquired their portions of land is found in the testimony of **Okwir William (DW2)**, which was highlighted earlier on in this judgment. Going by the said evidence, none of the defendants' acquisition is attributed to Adupa Ibrahim as stated by DW6.

[20] On the contrary, DW2 stated that a number of the defendants were given land by his father Alok Emmanuel. He mentioned the following;

1. *Ogwang Ismail (defendant No. 7)*
2. *Ocara Tito (defendant No. 8)*
3. *Agong Lusano (defendant No. 9)*
4. *Omara Peter (defendant No. 13)*
5. *Owiny Vincent (defendant No. 3)*
6. *Alung Benson (defendant No. 40)*

[21] The other version, as pointed out earlier, is the testimony of **DW1 (2nd defendant)** to the effect that the fourty acres of land were given to Elu John by DW1's father, Severino Awaa Odongo. In cross examination he categorically stated that; *"I was present*

when my father gave Elu 40 acres of land". As already mentioned, the above evidence is at variance with that of DW2 which was to the effect that the land was given by both Alok Emmanuel and the said Awaa Odongo.

[22] The highlighted contradictions and inconsistencies in the evidence for the defendants cast doubts on their assertions that they (some) witnessed the donation of a piece of land to Elu John which was not the entire suit land, and, that some lived on the suit land. In contrast, the plaintiff's witnesses were consistent that the suit land was bushy and unoccupied at the time Elu John acquired the same and when he sought to lease it subsequently. According to **PW2**, who was a member of the then District Land Board, none of the local people present raised an objection to the land inspection. This was corroborated by PW4, the then village chief, who too was present during inspection. In cross examination he was emphatic; *"It is not true any of the defendants have been living on the said land since the 1960s. The land was empty. The owner of the disputed land was the late Elu John."*

[23] The foregoing evidence is also buttressed by **PE6** (bearing a stamp dated 04/12/18) which shows the land was free and there was no dispute (see questionnaire (a) and (e)). **PW2** further informed Court as follows; *"During the inspection exercise we asked the people gathered if there was any complaint. They said there was no problem. The report is dated 04/12/1981."* **PE6** was tendered in evidence by PW2. As regards Alok Emmanuel (4th

defendant) who, according to DW1, was the one that gave land to some of the defendants, **PW2** stated that Alok's land is different from the suit land but adjacent to it. PW4, the former village chief also informed court that Alok Emmanuel was John Elu's neighbor on a different piece of land. **PW4** further informed Court that at the time of the land inspection (1981), Ocen Nicholas (1st defendant) lived in Ayira village. The said Ocen Nicholas did not testify and no evidence was led to shed light on how he came to live/ occupy the suit land. Another aspect of the defence case is that some of the defendants acquired the respective portions of the suit land through purchase from other people. These included defendant **No. 25 (DW3)** who stated that he bought three acres from Opete John and Ayoo Nelson in 1976. No sale agreement was tendered in evidence. Moreover, according to **PW4, Ayoo Nelson** lived in Iyany village. The said village, according to PW3, is part of the suit land.

- [24] **Defendant No. 41 (DW4)** testified that his father bought him two acres in 1985 and later DW4 bought another two acres from different people. He made a sale agreement with one of the vendors, one Etuku, but no such agreement was availed to Court. Defendant No. 19 (DW5) informed court that she too purchased the land in 1984, measuring five gardens, from Alunyu Silvesto. Again, no sale agreement was tendered in that regard. It is also the evidence of DW2 that while his father Alok Emmanuel freely gave land to some of the defendants, the others

bought from other people in Iyany village. Once again, no agreements were tendered in evidence.

[25] On the other hand, the plaintiff stated that some of the defendants entered onto the suit land in 1994 and others in 1995, contrary to the assertions by the defendants that they respectively acquired the land in the 1970s and 1980s. However, in view of the evidence of PW2, PW3 and PW4 that the suit land was vacant in 1981, coupled with the earlier mentioned grave contradictions in the defence evidence, court is inclined to believe the plaintiff that the encroachment started in 1994. Furthermore, had any of the defendants been in occupancy of any area of the suit land at the time of inspection of the same, no reason has been offered as to why PE6 did not allude to their occupancy or why PW2, PW3 and PW4 did not see them.

[26] The other aspect in the defence case is the court case that Elu John is said to have filed at Anyeke Court against some of the defendants around 1987/88, over the same land. Although it was mentioned that he lost the case, no decision or other proceedings of the said court were availed to this court to enable it form an opinion on the veracity of the defendant's claim. In sum total, court is satisfied that Elu John applied for 500 acres of land that was devoid of human settlement, save for Elu John himself. The same land was inspected by the District Land Board who did not find any of the defendants living on the land. Elu John secured title for the initial lease period of 5 years. Following his passing on, the plaintiff obtained Letters of Administration

in 1990 (PEII), whereupon he secured an extension of the lease to 49 years. Court accordingly finds the plaintiff is the lawful owner of the suit land.

Issue 2: Whether the Plaintiff obtained the said Certificate of Title Fraudulently

- [27] It is trite that fraud must be specifically pleaded and proved. The degree of proof required is not beyond reasonable doubt, but must be more than a mere balance of probabilities. See **J.W Kazoora Vs Rukuba, Civil Appeal No. 13 of 1992 (SC)**. Further, a certificate of title is sufficient proof of ownership of the land in question except for fraud. See **Katarikawe Vs Katwiremu and Anor [1977] HCB 18**. A person holding a certificate of title has, by virtue of that title, legal possession of the land, and can sue in trespass. See **Moya Drift Farm Ltd Vs Theuri [1973] E.A 114**.
- [28] In the instant case, fraud was pleaded in the amended written statement of defence as follows;

(a) There is no known survey of the alleged leased land that has ever been carried out or caused to be done by the plaintiff within the knowledge of the local authorities, the neighbors and any other stakeholders.

(b) that there is fraudulent indication of dates on the face of the purported land Title which is inconsistent with the date of death of the late Elu, processing the title and date of first issue.



(c) that even Ogwang Martin, the son of late Elu does not know of the existence of the alleged land title, and, as such, a member of the plaintiff's (with letters of administration) family, the plaintiff could not have processed and obtained this land title or cause transfer of title without his knowledge, being a beneficiary in the estate.

(d) that when the late Elu was defeated in the court battle at Anyeke in 1984, he abandoned the idea of leasing land which does not belong to him as he had run into serious problems at the earliest stage, hence the plaintiff's obtaining of leasehold title could only have been attained using underhand methods.

(e) that the plaintiff procured himself to be registered as proprietor of the land occupied, possessed and owned by the defendants in order to defeat the interest of the defendants.

[29] The defendants also denied committing trespass and pleaded they were in occupation as rightful owners. The evidence of the defendants, as can be discerned from their respective testimonies, regarding the alleged fraud is as follows;

DW1: "I did not see the surveyors otherwise we the neighbours would have been called/ summoned. I was never informed about surveyors."

DW2: "I do not know whether he [Elu John] leased the land after the court ruling/decision. If he was to lease the land as a neighbor I would have been called to sign/witness,"

DW3: "I am not aware this land was surveyed." DW6: "I did not witness the planting of mark stones on the land".

DW2: (what recalled): "I did not see any member of the District Land Board coming to the land. It is not true by the time Elu acquired title the land was vacant. If the land was inspected the neighbors should have signed."

- [30] According to the plaintiff (PW1) the land was first surveyed in 1984 while his father (Elu John) was still alive. None of the defendants were present since neither of them lived on the land. PE1 is the certificate of title issued to John Elu on a date not clearly discernible but the year is '84' or 1984. It was for the initial period of 5 years in respect of land at Adyeda Acappi, Loro, Oyam. Elu John passed away in 1988 and PW1 caused a re-survey of the land in 1989, which put the size of the land to 132 hectares.
- [31] The defendants and their witnesses hinge their claim of alleged fraud on the part of the plaintiff, merely on account of them not being made aware that surveyors were to come to the land. This aspect has to be weighed against the other evidence on record with regard to their interest on the land at the time. As mentioned earlier, the evidence on the side of the plaintiff was consistent that none of the defendants lived on the suit land by

1981, they only started settling on the land in 1994. Secondly, the credibility of their respective claims was dented by the contradictions and inconsistencies in their evidence as a whole, with regard to the critical issue of how Elu John obtained land in the area and also, how, they too obtained their respective claimed portions of the suit land. In view of the available evidence that their alleged interest in the suit land was unknown or not visible, one could safely conclude there was no requirement for them to be made aware of the survey process. Indeed, their lack of 'relationship' with the suit land explains why they did not know about the survey. In effect, it is not sufficient for one to ask Court to find there was fraud merely because he was not aware of the survey process.

- [32] The defendants also sought court to infer fraud on the contention that even the plaintiff's brother Ogwang Martin, was not aware of the existence of the alleged land title, thus the plaintiff could not have obtained title without his brother's knowledge. The said Ogwang did not testify, therefore any reference to him is of no evidential value. It is now well settled that to procure registration of title in order to defeat an unregistered interest amounts to fraud. See **Marko Matovu and Ors Vs Mohammed Seviru and Anor, Civil Appeal No. 7 of 1978**; **Ssejaka Nalima Vs Rebecca Musoke, Civil Appeal No. 12 of 1985 (SC)**; **Uganda Posts and Telecommunications Vs Lutaaya, Civil Appeal No. 36 of 1995 (SC)**. As mentioned several times in this judgment, there is ample evidence to show

that none of the defendants lived on the land till 1994 when they started encroaching on the same. To that extent, it cannot be said the process of registration of the suit land was procured in order to defeat any of the defendant's existing (then) unregistered interest. Court did observe graves at some of the homes said to belong to some of the defendants. However, the existence of graves is not sufficient proof of ownership of land, more so, if the person died or was buried during the subsistence of the trespass onto the suit land. In a nutshell, no evidence was led to show the plaintiff procured extension of title by fraud. That concludes the 2nd issue.

Issue 3; Remedies Available to the Parties

- [33] The plaintiff seeks an eviction order against the defendants, a permanent injunction from interfering with the suit land, mesne profits, general damages and interest. Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes, or portends to interfere with another's lawful possession of that land. See **Justine Lutaaya Vs Stirling Civil Engineering Co. Ltd, Civil Appeal No. 11 of 2002 (SC)**. In the instant case, the plaintiff as the administrator of his father's estate was therefore in lawful constructive possession of the suit land. He was clearly entitled to bring this suit against the defendants. In view of the evidence discussed in the judgment, it is the finding of court that the defendants are trespassers onto the plaintiff's land. The plaintiff prayed for general damages. A plaintiff who suffers damage due to the wrongful act of the



defendant must be put in position he or she would have been. In determining the quantum of damages, the courts have been mainly guided by the value of the subject matter, the economic inconvenience that party may have been put through, the nature and extent of the breach. See **Dr. Lwamafa Vs Attorney General [1992] KALR 21**; **James Fredrick Nsubuga Vs Attorney General, HCCS No. 13 of 1993** and **Uganda Commercial Bank Vs Kigozi [2001] 1 E.A 305**.

- [34] A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had she not suffered the wrong. See **Kibimba Rice Ltd Vs Umar Salim, SCCA No. 17 of 1992**. Furthermore, the party claiming general damages is expected to lead evidence or give an indication as to what damages should be awarded on inquiry as to the quantum. See **Robert Coussens Vs Attorney General, SCCA No.8 of 1999**. In the present case, there is evidence that the plaintiff was denied utilization of the areas of the suit land occupied by the defendants. He has not benefitted from the land from 1994 to 2001 when the suit was filed. This deprivation clearly makes the defendants liable to pay general damages. Having stated as above, I find that whereas the plaintiff was able to show that he was deprived of those areas of the suit land, he did not lead evidence as to the quantum of damages he suffered as a result of the defendant's conduct. He merely averred in his pleadings in the plaint that he claims for general damages.



- [35] In a situation where no indication is given by the plaintiff as to what quantum of damages ought to be awarded, the discretion lies with the court to determine the appropriate award. Similarly, in the instant case, taking into account the long period the plaintiff has been denied quiet enjoyment of those portions of the suit land and the economic benefits that would have accrued from utilizing the same, an award of Ugx 50,000,000/= (fifty million shillings only) to the plaintiff is appropriate as general damages.
- [36] The plaintiff also seeks mesne profits. **Section 2 of the Civil Procedure Act (CPA)** defines mesne profits *as those profits which the person in wrongful possession of the property actually received or might, with ordinary diligence, have received from it, together with interest on those profits but shall not include profits due to improvement made by the person in wrongful possession.* In **George Kasedde Vs Mukasa Emmanuel Wambedde and Ors, HCCS No. 459 of 1998**, Mukiibi J stated as follows; “It is settled that wrongful possession of the defendant is the very essence of a claim for mesne profits.....the usual practice is to claim for mesne profits until possession is delivered up, the court having power to assess them down to the date when possession is actually given.” In **Elliot Vs Boynton [1924] 1 Ch. D 236 (CA)** Warrington LJ, at page 250 said; “Now damages by way of mesne profits are awarded in cases where the defendant has wrongfully withheld possession of the land from the plaintiffs”. [Emphasis added].



[37] Although the plaintiff in the instant case pleaded mesne profits, he did not adduce any iota of evidence to prove the same. He did not even attempt to show how the defendants were accruing profits from their possession and the quantum of the profits. After careful evaluation of the evidence, court finds the claim for mesne profits not proved. See also **Betty Kizito Vs David Kizito Kanonya & 7 Ors S.C.C.A No. 8 of 2018.**

[38] Regarding the issue of costs, **Section 27 CPA** provides that costs follow the event unless for good reason court directs otherwise. See also **Jennifer Behange & Ors Vs School Outfitters, Civil Appeal No. 53 of 1999 (CAU)**. In the course of hearing, court was notified that some of the defendants had passed on. These included:

- 1. Alok Emmanuel (Defendant No. 4)***
- 2. Alok Erairo Defendant No. 14***
- 3. Hellen Okwee Defendant No. 18***
- 4. Acar B Defendant No. 20***
- 5. Ouni John Defendant No. 28***
- 6. Ocen Bruno defendant No. 30***
- 7. Olwee Nelson Defendant No. 42***
- 8. Aciro Caroline defendant No.22***

[39] Mr. Omara Atubo, Counsel for the plaintiff, informed court that after consulting his client, it was agreed the suit against the said defendants abates and the claim proceeds against the others.

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[40] In the premises, judgment is entered in the suit in the following terms;

1. Save for the named deceased defendants, the other defendants are trespassers on the suit land.
2. An order of eviction is issued against those remaining defendants individually or their servants or agents or any person claiming under them.
3. A permanent injunction is issued against the defendants (except the deceased) and or their agents restraining them from interfering with the suit land.
4. The plaintiff is awarded general damages of Ugx 50,000,000/= (fifty million shillings only) against the remaining defendants jointly and severally.
5. The plaintiff is awarded interest on the decretal sum at 10% p.a from the date of judgment till payment in full.
6. The plaintiff is awarded costs of the suit.

Dates, signed and delivered at Lira this 24th day of February
2022


Duncan Gaswaga
JUDGE