

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL APPEAL NO.71 OF 2012
(Arising from Mengo Civil Suit No. 690 of 2007)

SANDY NDIMWIBO..... APPELLANT

VERSUS

1. JOHN MBABALI MAKANG
2. DR. TIMOTHY KIMULI MULINDWA..... RESPONDENTS

JUDGEMENT

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

BACKGROUND

This is an appeal against the judgment of His Worship Vincent Mugabo the Chief Magistrate of Mengo Chief Magistrates Court delivered on 31st August 2012. In brief, the facts as admitted by the trial court on which this appeal is based are as follows:

The 1st respondent is the registered proprietor of the land comprised in Kibuga Block 12, Plot 1432 land at Mengo, Kisenyi, and Kampala District. (hereafter called the suit land). The 2nd respondent is a lessee for 49 years on the suit land with effect from 1/3/2009. The appellant is the son of the late Paddy Ndimwibo who was a former tenant of the 1st respondent and had executed a tenancy agreement with him in respect of the suit land on 1/6/1994. The 1st respondent extended Paddy Ndimwibo's tenancy for a successive period of 5 years with the last term expiring on 1/6/2009. Paddy Ndimwibo was running a maize mill on the suit land in temporary structures.

Paddy Ndimwibo died, and his son the appellant took over the business of the mill and continued to pay rent to the 1st respondent under the extended tenancy. On the 1/2/2009, the 2nd respondent after acquiring the lease from the 1st respondent sought to develop the suit land with a hospital and through the agent of the 1st respondent, verbally and in writing requested the appellant to vacate the suit land by 30/3/09, but the latter declined verbally. The appellant defiantly remained

in possession of the suit land, and stopped paying rent in March 2009, and the 2nd respondent's intended developments could hence not be effected.

The appellant filed a defence in which he acknowledged the fact of the tenancy between the 1st respondent and the late Paddy Ndimwibo. He argued that the tenancy was extended to June 2014 and that it was on the basis of his father's claim and renewal, which he himself stayed on the suit land and paid rent.

The 2nd and 3rd defendant never filed a defence but on 17/9/09 counsel for the respondent reported that the claim against them had been dropped. The 4th defendant filed a defence and participated in the scheduling conference but later settled the matter out of court and a consent judgment was executed between him and the respondents. The matter thereby proceeded between the respondent and the appellant only.

At the trial, the appellant was the sole defence witness. On the other hand, the respondents called three witnesses namely the 2nd respondent as PW2 and Alice Makanga wife of the 1st respondent as PW1. There was in addition another PW1 one Muyige Jimmy stated to be the son of the 1st respondent.

The trial court found for the respondents on the argument that the appellant is a tenant in tail and that the refusal by the appellant, to vacate the suit land, rendered them trespassers. The trial Magistrate also, issued an eviction order and permanent injunction against the appellant and in addition, the respondents were awarded an order for vacant possession, general damages for trespass and mesne profits. The appellant being dissatisfied with the judgment and orders of the Chief Magistrate appealed to this Honorable Court on five grounds namely;

1. The learned trial magistrate erred in fact and law when he held that the appellant was a tenant in tail.
2. The learned trial magistrate erred in fact and law when he failed to properly evaluate and appreciate the evidence on record and hence arriving at a wrong decision that the appellant was a trespasser on the suit land.
3. The learned trial magistrate erred in fact and law when he relied on inadmissible evidence and decided that appellant was a tenant in tail and a trespasser.

4. The learned trial magistrate erred in fact and law when he failed to appreciate the evidence on record and relied on the written statement of defence to conclude that the appellant was a tenant in tail.
5. The learned trial magistrate erred in fact and law when he failed to properly evaluate and appreciate the evidence on record and hence arrived at a wrong decision when he awarded the respondents the excessive general damages of Ushs. 25,000,000/= and mesne profits of Ushs 12,300,000/=.

I am requested as the first appellate court, to re-evaluate the evidence and come to my own conclusion but even then, I am bound by the findings of fact of the lower court, See for example, **Fredrick Zaabwe Vs Orient Bank & 5 Others SCCA No. 4/2006**. See also **Banco Arabe Espanol Vs Boll SCCA No.8/98**. That is the principle I will follow in deciding this appeal.

Resolution of the grounds of appeal:-

Grounds 1 and 4;

The learned trial magistrate erred in fact and law when he held that the appellant was a tenant in tail

The learned trial Magisterial erred in fact and law when he failed to appreciate the evidence on record and relied on the written statement of defence to conclude that the appellant was a tenant in tail.

It was submitted for the appellant that a tenant in tail is a person entitled in possession or on death, of his or her ancestor to an entailed interest. The purpose of this estate was to keep the land of a family intact in the main line of succession. They then argued that in the instant case, the interest is a lease and does not qualify as family land that can be entailed. Further, Counsel referred to the case of **Njeri Kimani & Another Vs Joseph Njoroge, Murigi & Anor, (Nairobi HCC Case No. 819 of 2000)** where it was held that a person cannot be a tenant unless he is in possession of the premises pursuant to an agreement between himself or herself and the landlord on the terms that he pays an agreed rent. That no evidence was on record to show that there existed such an arrangement between the appellant and the 1st respondent or that the appellant was paying rent. PW2 alluded that the tenancy agreement which was brought before the trial court was between the 1st respondent and the late Paddy Ndimwibo and not the appellant. It was

in addition argued that the appellant's evidence was that he only used to visit the mill on the suit land to see its progress, but not as a tenant.

It was further submitted for the appellant that, it was the evidence of DW1 that Letters of Administration of his late father's estate were granted to the Administrator General. That it was shown to court that the Administrator General was in charge of the late Paddy Ndimwibo's estate including the said equitable leasehold land but the learned Magistrate ignored that hence reaching a wrong decision that the appellant was a trespasser and a tenant in tail. Counsel relied on **Section 4(3) Administrator Generals Act Cap 157 and Harrowby (Earl) Vs Snelson & Anor[1951] All ER 140** where it was held that a landlord cannot recover in ejectment unless it was shown that some other person and not the widow was the executor or administrator of the estate of the deceased and **Khalid Walusimbi Vs Jamil Kaaya & Attorney General HCCS No. 526 Of 1989 [1993] KLR 20** that defines a legal representative.

Counsel for the respondents on the other hand submitted that the appellant became entitled to remain in possession as the successor or heir of the late Paddy Ndimwibo the original tenant of the 1st respondent. That the appellant was not just a successor or heir of the original tenant but a tenant of the respondent upon the death of his father. That in proof of that fact, the appellant went on to pay rent to the respondents and receipts were issued in his names as testified by PW2 at page 77 of the record of appeal and admitted as Exhibit "ED5". It was further argued for the respondent that according to **Order 6 Rule 7 CPR**, a party is bound by his pleadings and as such, the appellant cannot be permitted to deny being a tenant of the respondent yet in paragraph 5 (f) of his written statement of defence, he unequivocally admits being so, his only plea being that he would be entitled to sufficient notice before eviction.

Further, in reply to the appellant's submission that it was the Administrator General in charge of the suit land, the respondent contended that the pleadings did not include the fact that the appellant was wrongly sued or that the right defendant should have been the Administrator General. They further argued that the purported Letters of Administration were never admitted in evidence. Counsel for the respondent further contended that, the appellant was a tenant in tail having succeeded his late father's tenancy, remained in possession of the suit premises on the basis of the tenancy agreement and paid rent. That the appellant unlawfully refused to vacate the suit land, and thus became a trespasser thereon.

The thrust of the respondent's arguments is that the appellant is bound by his pleadings and that he is a tenant in tail. On the other hand, counsel for the appellant contends that there was never a contractual tenancy between him and the 1st respondent and his conduct with regard to the suit land cannot infer one. He also contended that **Order 6 Rule 7 CPR** cannot operate where the said pleadings are contrary to the litigant's instructions and more so to deny him the right to defend himself and make him suffer the consequences of his advocates blunder. At page 83 of the record of appeal, the appellant clearly indicated to court *that "...it is my lawyer who prepared this document. This is my defence. But I did not prepare the document."*

According to **Black's Law Dictionary, 8th Edition page 650** a tenant in tail is defined as "*an estate that is heritable only by specified descendants of the original grantee, and that endures until its current holder dies without issue and it is also derived from the Medieval Latin term "feodum talliantum" which means "cut short fee".* This is further elaborated by **Ben Mcfarlane, Nicholas Hopkins and Sarah Nield In Land Law Text, Cases & Materials Edition at page 704** where an entailed interest is referred to as "*an estate in land that passes successively through direct lineal descendants. It represents the clearest attempt to keep land tied up for future generations...the entail lies outside the scope of the rule against perpetuities....*"

In my view, the grantee in the instant case is the late Paddy Ndimwibo father to the appellant who was a tenant on the suit land to the 1st respondent as evidenced by the tenancy agreement which both parties did not contest. The appellant testified during the hearing of the case in the lower court at (page 80 of the record of appeal) that "*I am the heir of Paddy Ndimwibo*". According to the above definition, since the appellant is the heir to the late Paddy Ndimwibo who was a tenant of the 1st respondent, being a lineal descendant and I as I will later show, was to have remained in occupation of the lease, after Ndimwibo's death, he automatically becomes a tenant in tail to the 1st respondent.

However, even if it could be argued that the doctrine does not apply to the appellant, it is clear that at a certain point in time, he took over the tenancy in his own right and on page 79 of the record he admits that rent receipts (for May 2007, July 2008 and January 2009) which were addressed in his name were left at the mill. Further, a tenancy agreement need not necessarily be in writing. It is enough that the parties comply with the terms of the tenancy in particular, the

tenant pays rent and remains in occupation. Indeed, according to his Written Statement of Defence, (in paragraph 5) the appellant pleaded that:-

- (a) *The 1st plaintiff entered into a tenancy agreement with the 1st defendant's late father, sometime in 1994,(a copy of the agreement is attached and marked ("A").*
- (b) *The said agreement upon expiry, in 1999, the 1st plaintiff and the 1st defendant's late father entered into negotiations in respect of renewal, which culminated into a renewal of the same as communicated in the 1st plaintiff's letter to the 1st defendant's late father of the 7th October 1999, (a copy of the letter is attached and marked ("B").*
- 5(f). *That in consequence, the 1st defendant has continued to occupy the suit premises and paying the necessary rents and indeed the term is yet to expire. (Copies of the receipts are attached and marked "F").*
- 6. *That it was a major term of the tenancy agreement that provided the tenant complies with the terms of the agreement, the tenancy shall be renewed and indeed in anticipation of the expiry, the 1st defendant had entered into fresh negotiations for a further term. (emphasis mine)*
- 7. *Without prejudice to the foregoing, the tenancy was still subsisting and even if the plaintiff terminated the same, considering the time spent thereon and the developments thereon the defendant is entitled to sufficient notice.(emphasis mine)*
- 8. *The 1st defendant shall aver and contend that he is not a trespasser, as he is in occupation of the suit premises by virtue of the agreements between the 1st plaintiff's and his late father, for which reason the plaintiffs are not entitled to any mesne profits.*

That in my view should have been the gist of the appellant's defence at the trial. While considering the objective of pleadings the court in, See for example, **International Forwarders (U) Ltd Vs East African Development Bank SCCA No.33/1992** quoted in **Mumbejja Aida Nanozi Banoba& Anor Vs Ssebaale Henry & 2 Ors HCCS No.219/08** (unreported) had this to say;

"The system of pleadings operates to define with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which court will be called to adjudicate between them. Thus, issues are formed on the case of the parties so discussed in the pleadings and evidence as directed at the trial and the proof of the case so set and covered by the issues framed therein. A party is expected and bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on a case not so set up by him and be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of pleadings."

A plain reading of that part of the written statement of defence above indicates that the appellant by his pleadings admitted being the 1st respondent's tenant by virtue of a substring tenancy; his only quarrel being that he was entitled to sufficient notice on rescission of the tenancy contract by the 1st respondent. He also clearly admitted that he is in possession of the suite property. In spite of that defence, the appellant in his testimony sought at page 83 of the record to alienate himself of that written statement of defence blaming his counsel for preparing it. He stuck to his guns that he was never a party to the tenancy and did not pay any rent to the respondents, was not the administrator of late Ndimwibo's estate and thus not the correct party to be sued.

Courts have often times taken recognition of the fact that litigants ought to be protected or separated from the misdeeds of their counsel. For example the court in the case of **Banco Arabe Espanol Vs Bank of Uganda** considered that issue extensively and came to the conclusion that the East African and Uganda position is that the mistake or misunderstanding of the plaintiff's legal advisor, even though negligent, may be accepted as a proper ground for granting lease (e.g. to extend time). However the court was quick to add that "whether the ground for granting relief will be acceptable depends on the facts of the particular case."

I take the same view. It is important to ascertain the circumstances of each case before applying the general rule.

It is not in dispute that the Written Statement of Defence was prepared by and presented for the appellant by his legal counsel. The principle defence presented therein is that there was a subsisting tenancy between the 1st respondent and the appellant's deceased's father. That upon the demise of his father, the appellant continued to occupy the land on the same terms and at some point negotiated fresh terms and even paid rent. It is inconceivable that the appellant's counsel conjured up such a defence by himself. Conversely, it is more likely that these were facts related to him by the appellant. Even if it is the legal counsel who erred, the appellant had sufficient time over the years to seek leave to amend his pleadings in a manner that would soundly put forward the defence that he preferred. Therefore in my view, this was not a case of a legal counsel misrepresenting his client, but a client trying cunningly to deviate from his pleadings probably after receiving advice from a new lawyer, that a certain defence could be open to him.

Although the lower court declined the tendering in of rent receipts that were in the appellant's names (where he is alleged to have paid rent to the 1st respondent) for the suit land, the trial Magistrate still found at page 89 and 90 of the record of appeal in his judgment that;

“....the 1st defendant did not deny being a son of the late Ndimwibo Paddy the original tenant to the 1st plaintiff and that in paragraph 5 (f) of his written statement of defence, he avers that he continues to be in occupation and paying the necessary rent...all these averments and evidence of PW1, PW2 lead to only one conclusion that the 1st defendant by conduct, had become a tenant in tail of the 1st plaintiff, and as such is stopped from denying this fact at this moment and cannot be allowed to depart from his own pleadings which are very constructive on this matter, DW1 admitted having received the notice which he sent to the Administrator General...The fact that the 1st defendant remained on the land after the expiry of the tenancy and refusal to vacate after the notice that Leads to no conclusion but to a finding that he became a trespasser on the land...”

I would concur with the holding of the learned Chief Magistrate basing on the available evidence and the pleadings of the appellant in the written statement of defence.

It was also argued for the appellant that not being the administrator of the estate of the late Paddy Ndimwibo's estate, he was wrongly sued. He argued that the Administrator General holds that portfolio and an attempt was made to present Letters of Administration to prove that fact. This is indeed a correct statement of the law. However, I have noted that this fact was not proved to the required standard. Firstly, only a copy of the Letters of Administration was presented and even then, only allowed for identification purposes. Secondly, this is a fact that is virtually absent in the pleadings of the appellant. It was introduced into evidence as an afterthought meant to thwart the respondent's claim and would offend the provisions of **Order 8 rule 17 CPR** which permits the introduction of a new ground of defense (which has arisen after filing of a defence) only by inclusion in the pleadings.

Thirdly, I have already held the view that the appellant was a tenant in tail and subsequently, at some point, the appellant took over the tenancy in his own right at the point when he entered into fresh negotiations for a further term. At that point, the tenancy ceased to be the concern of the deceased's estate and thereby would not fall under the mandate of the Administrator General if indeed it was the latter who was appointed administrator of Ndimwibo's estate. Indeed, the evidence available is that the receipts available were all in the names of the appellant and not the

Administrator General which placed the appellant in the position of tenant by himself and not as an heir of the deceased.

My belief in the above facts is strengthened by the evidence of the 2nd respondent who informed the lower court that he got to know from the agents who run the milling machine on the suit land that the person who used to pay rent was the appellant and he was the one in occupation of the suit land. Although it was argued for the appellant that the alleged agents were never called to testify, he never specifically rebutted the evidence that there were agents running the maize mill. He further testified that he received the letter to vacate the premises and sent it to the Administrator General. This was further proved by the respondents where they testified that the appellant was duly served with a 14 days written notice to vacate the premises.

I accordingly agree with the trial Magistrate that the appellant was tenant in tail. I only qualify it to state that he remained so until he entered into fresh negotiations with the 1st respondent to acquire a tenancy in his own right. Further, the appellant's arguments that it was the Administrator General in charge of the suit land are also rejected. Grounds 1 and 4 are accordingly dismissed.

Grounds 2 and 3

The learned trial magistrate erred in fact and law when he failed to properly evaluate and appreciate the evidence on record and hence arriving at a wrong decision that the appellant was a trespasser on the suit land.

The learned trial magistrate erred in law and fact when he relied on inadmissible evidence and came to an erroneous conclusion that the appellant was a tenant in tail and a trespasser.

Counsel for the appellant submitted that it was the evidence of PW1 and PW2 that they had never seen the appellant. Also that, PW1 was improperly before court for having failed to produce either powers of attorney or at least, a marriage certificate to prove the alleged relationship between her and the first respondent. Therefore, that this witness was and is a stranger to court whose evidence ought not to have been relied on at all. It was also argued for the appellant that the purported agents of the appellant who allegedly reported to PW1 that it was the appellant who was running the maize mill, never testified at the trial and that such evidence

should not have been relied on by the learned trial magistrate to reach the conclusion that the appellant was a tenant in tail and a trespasser on the suit land. In addition, counsel also argued that there was another PW1, one Muyige Jimmy who was unknown to them and thus a stranger to the proceedings.

In reply, counsel for the respondent submitted that a wife does not have to produce a marriage certificate to become a competent witness in proving any fact before court where her husband is involved. That, if the matter is not one of divorce or judicial separation, she does not need a marriage certificate. In this, counsel relied on **Section 121 of the Evidence Act**. They further argued that evidence of PW1 was cogent and credible. Her evidence was not seriously challenged to appear untruthful. The said power of attorney was unnecessary as there was no dispute of ownership of the suit land.

I have critically analyzed the judgment and in my view, in making his decision in that regard, the Chief Magistrate relied principally on the appellant's pleadings, his conduct at the trial, and available evidence that the appellant was the heir to the late Paddy Ndimwibo. He also relied on this fact that the appellant admitted having received the notice to vacate the suit premises, but insisted to remain on the suit land after the expiry of the tenancy agreement, and his apparent attempts of departure from his pleadings. All this was corroborated by the evidence and testimonies of the 2nd respondent and PW1 (wife to the 1st respondent). According to the Evidence Act, a party may present his/her evidence in any manner they deem fit, and this would include presenting any witness they deem fit. I see nothing in the law that prevents a wife from giving evidence in a civil matter to support the claim of her spouse. **Section 121 Evidence Act** stipulates that;

“In all civil proceedings, the parties to the suit, and the husband and wife of any party to the suit, shall be competent and compellable witness”.

Therefore the evidence of PW1 cannot be categorized as hearsay evidence. It was admissible. I also do agree that the appellant received but ignored the notice to vacate the suit land which made him a trespasser. I note that Muyige Jimmy was presented at page 39 of the record as PW1 and claimed to be the 1st respondent's son. The record bears witness that he was properly sworn and gave his testimony in the presence of both counsel. However, it appears that his evidence was abruptly cut short and my not have been put to cross-examination. Counsel for the appellant

did not object to all of this at the trial. It may have been a human error on the court and counsel to have then gone ahead to mark another PW1 who begun his testimony at page 62 of the record. Nonetheless, there was other overwhelming evidence, which tipped the suit in the respondents' favour. Therefore, grounds 2 and 3 of this appeal are also dismissed.

Ground 5;

The learned trial Magistrate erred in fact and law when he failed to properly evaluate and appreciate the evidence on record and hence arrived at a wrong decision when he awarded the respondents the excessive general damages of Ushs 25,000,000/= and mesne profits of Ushs 12,300,000/=.

Counsel for the appellant submitted that the learned trial magistrate proceeded on wrong principles of law and he misapprehended the evidence to make an award of excessive general damages.

It was further argued that the 1st respondent did not prove the damage suffered, and that the allegations of the purported 2nd respondent's planned developments on the suit land were not quantified and cannot as a result stand as a basis for such an excessive award. Counsel then relied on the cases of; **Crown Beverages Ltd Vs Sendu [2006] 2 Ea 43, Interfreight Forward Vs East African Development Bank (Supra) And Njeri Kimani & Another Vs Joseph Njoroge, Murigi (Supra)** to argue that mesne profits are special damages and require to be specifically pleaded and strictly proved.

Counsel for the respondents in reply while citing the case of **Clifton Securities Ltd Vs Huntley & Ors [1948] ALL ER 283** submitted that the court has the discretion to award mesne profits by using the monthly rent depending on whether the rent is lower or higher than the real value of the premises in issue and that such discretion has been exercised in very many cases. They then contended that the learned trial Magistrate applied a correct legal formula and arrived at a fair assessment of rent in the area where the land is situate when he awarded USHs 300,00/= as mesne profits per month for 41 months, and came up with a reasonable sum of 12,300,000/=. Counsel in conclusion submitted that the award of 25,000,000/= as general damages is very fair and reasonable and therefore there was no justification for its reduction.

In the case of **Matiya Byabalema & Others Vs Uganda Transport Company (1975) Ltd** **SCCA No.10 Of 1993 (Unreported) Odoki Ag. DCJ** (as he then was) at page 4 stated that;

“It is now a well settled principle that an appellate court may not interfere with an award of damages except when it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on a wrong principle or that he misapprehended the evidence in some material respect, and so arrived at a figure, which was either inordinately high or low...”

In the instant case the trial Chief Magistrate at page 90 of the record of appeal held that;

“I am satisfied that the plaintiffs are entitled to mesne profits from when the 1st defendant refused to vacate and stopped paying rent from March 2009 at Ushs. 300,000/= per month, the fair value in my assessment at this time of judgment. Therefore from that time to date which is 41 months would be Ushs 12,300,000/= and I award that as mesne profits to the 1st plaintiff. The plaintiff prayed for general damages for trespass and inconvenience. These are assessed at the time of judgment and intended to place the plaintiff in a position as before the injury complained of. PW2 complained of the failure of his project not even barred from financial institutions to fund the project, he equally lamented the loss of time and money, suffering at the conduct of the defendants. The loss suffered to the plaintiffs here is immense that I am inclined and satisfied to award general damages of Shs.25,000,000/=.”

It should be noted that general damages are compensatory in nature. In the case of **Associated Architects Vs Christine Nazziwa Civil Appeal No.5 Of 1981 (Unreported)** it was held that the person injured must receive a sum of money that would put him in as good but neither better nor worse position than before the wrong was committed.

In the case in point, having upheld that the trial Chief Magistrate’s judgment that the appellant was a tenant in tail and a trespasser on the suit land, and also after agreeing with the trial Magistrate that the respondents being the lawful owners of the land were entitled to an award of general damages that would replace them in the same position before the trespass had been committed by the appellant. The Chief Magistrate rightly used his discretion and did not proceed on a wrong principle or misapprehended the evidence in some material respect when he based his award on the loss of time, money and suffering of the respondents in awarding them general damages of 25,000,000/=. I see no valid reason to interfere with that award.

With regard to mesne profits, I agree with counsel for the appellant that a claim for mesne profits is in the nature of special damages and requires to be specifically pleaded and strictly proved. In

the amended pleadings, the respondents prayed for mesne profits though they were not quantified. However, the respondents attached to the amended pleadings (in paragraphs 4(a) and 4(b)) copies of the tenancy agreement together with the extensions where the rent was 40,000/= per month which was subsequently increased to Shs.60,000/- per month. This in my view is sufficient pleading and proof of the mesne profits.

In the case of Clifton Securities Ltd Vs Huntley & Ors (supra) Denning J stated that,

“At what rate are the mesne profits to be assessed? When the rent represents the fair value of the premises, mesne profits are assessed at the amount of the rent, but, if the real value is higher than the rent, then the mesne profits must be assessed at the higher value.....”

According to the pleadings, the rent payable was Shs.60,000/- per month. No evidence was led by the respondents to show that the rent had thereafter been revised upwards or that the value of the property had appreciated. Further, there was evidence that the appellant occupied only temporary structures in which he run the mill. There is therefore no evidence that the Chief Magistrate could have based his award of shs.300,000/- per month and indeed no reasons were forwarded on that increment.

Therefore, I hold that the award of Shs.12,300,000/- is unjustified and I set it aside. I instead award Shs.60,000/- per month for 41 months making a total sum of Shs.2,460,000/- that is awarded instead. And as such Ground 5 succeeds in part.

In summary therefore, the appellant has substantially failed to prove the grounds of the appeal which is dismissed. The appellant having partially succeeded in ground 5 would entitle the respondent to 9/10 or 90% costs of this appeal and of the trial court.

I so order.

EVA K. LUSWATA
JUDGE
29th August 2014