

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
CIVIL SUIT NO. 306 OF 2008**

- 1. DAVID RWENDEIRE**
- 2. ARINAITWE DENIS..... PLAINTIFFS**
- 3. ALEX KAGGWA**

**VERSUS**

- 1. RIFT VALLEY RAILWAYS (UGANDA) LTD..... DEFENDANTS**
- 2. MANTRAC (U) LTD**

**JUDGMENT**

**BEFORE LADY JUSTICE EVA K. LUSWATA**

The plaintiffs brought this suit against the defendants for the recovery of special, general and exemplary damages and costs of the suit.

The plaintiffs' claim is that since the 1960s by themselves or their predecessors, acquired, owned and developed the suit land at Central Zone Wabigalo Parish Makindye Division without any interruption until 4/4/08 when the defendants' agents and workmen unlawfully came upon the suit land and destroyed the developments, gardens, household properties and evicted them from the suit land. That the defendant's actions were unlawful as the plaintiffs are lawful *bibanja* owners on the suit land which they and their predecessors have resided on and developed unchallenged for a very long time.

The 1<sup>st</sup> defendant denied the plaintiff's allegations and contended that sometime in November 2007, she received reports from its field officials and the local authorities of Wabigalo Parish about illegal settlement by encroachers within the railway reserve, part of which is the suit land. That such settlement had caused health hazards, criminal activity and had blocked the flow of water to the main channel thereby causing serious floods within the area. That the 1<sup>st</sup> defendant through various notices and during the course of meetings held among them, Railway Police, local authorities and the encroachers (the plaintiff's inclusive), advised the plaintiffs to vacate the suit land which they ignored. That the eviction was carried out on 4/4/08 with the help of police officers and area local authorities after due notice and thereafter, the police registered and took custody of all the properties that were removed from the plaintiff's illegal structures and

stored them pending claims from their respective owners. That some, but not all of the encroachers have since claimed their properties from police.

The 1<sup>st</sup> defendant also contended that the suit land is a railway reserve according to the concession agreement with the Government of Uganda which she has a duty to protect against encroachment and therefore, the plaintiffs' occupation of the suit land is illegal. At the scheduling of this case on 22/4/13, both counsel agreed and adopted the conferencing notes filed in court on 6/3/2013 by counsel for the plaintiff with adjustments as follows:-

**Agreed facts:**

On the 4<sup>th</sup> April 2008, the plaintiffs were evicted from the suit land by the 1<sup>st</sup> defendant with the help of the police and the area local council authorities.

**Agreed facts:**

- (a) Whether the plaintiffs were lawful *bona fide* occupants on the suit land.
- (b) Whether the eviction was lawful.
- (c) Whether the 1<sup>st</sup> defendant was liable for properties destroyed including homes and gardens.
- (d) Remedies available.

On 3/4/2014 when the suit came up for hearing, it was proved that despite having been served with hearing notices neither the defendants nor their counsel appeared in court. I also considered the fact that on four consecutive hearings (following the scheduling), the defendants had failed to appear and had also failed to file their witness statements. Therefore, with leave of court, the suit proceeded *ex parte* under **Order 9 rule 20 (1) CPR**. This court also granted leave to the plaintiff to withdraw the claim against the 2<sup>nd</sup> defendant with no order as to costs since it did not file a written statement of defence. Therefore, I shall for the purposes of this judgment, hereafter refer to the 1<sup>st</sup> defendant as defendant.

The plaintiffs adduced evidence by way of witness statements of the plaintiffs and in addition, that of a one Alinga Julius which were admitted in evidence as their evidence in chief. Counsel for the plaintiff was also directed to file written submissions which he complied with.

## **Resolution of the issues-**

### **Issue one and two;**

- 1. Whether the plaintiffs were lawful/bona fide occupants on the suit land.**
- 2. Whether the eviction was lawful.**

Counsel for the plaintiffs submitted that the claims of the defendant in her written statement of defence, that the plaintiffs were evicted because they encroached or occupied the railway reserve is false because the term “railway reserve” or its extent is not defined in the Uganda Railway Corporation Act, (hereinafter called the Act) which is the law governing operations of the defendant’s activities. They in addition argued that a railway line is not by itself an easement and therefore that the defendant cannot in law own or possess a right to grant the suit land of the plaintiffs. In this, without recognizing the legal ownership of the dominant tenement. Counsel relied on the cases of **South Eastern Railway Company Vs. Cooper (1924)1 CH 211 at 218** and **Mrs Makumbi & Another Vs. Puran Singh Ghana and Another (1962) EA 331**.

Counsel also submitted that the actions of the defendants were contrary to **Sections 34 (1), (3), (4) & (5) and 48 of the Act**. That those sections make provisions for the circumstances under which the defendant or its employees are empowered to act against any person who enters land under their control to be restricted to purposes of preventing occurrence of any accident, hence the evictions in this case were unlawful. He further submitted that the plaintiffs having lived and developed the suit land without any challenge from anybody including the defendant since 1970 and 1980 respectively. That they were bona fide occupants and therefore their eviction and demolition of their houses and destruction of their household properties by the defendant was contrary to the clear provisions of law. In this he relied on **Section 1 (e), 31 (1) & (2), 35 (2) of the Land Act** and **Kampala District Land Board & Another Vs. Venansio Babweyaka & 3 Others SCCA No. 2 of 2007**

The word bona fide occupant is defined in **Section 29 (2)** of the Land Act to mean;

*“a person who before the coming into force of the Constitution had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or had been settled on land by the Government or an agent of the Government, which may include a local authority.”*

**Section 29 (5)** of the same Act states that, *“Any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant under this section shall be taken to be a bona fide occupant for the purposes of this Act”*.

It was the evidence of the 1<sup>st</sup> plaintiff that he inherited the suit land from his grandmother the late Karyamozi Jorin in 1985 and continued cultivating it and growing crops thereon. He also stated that in 2002 together with the 3<sup>rd</sup> plaintiff they constructed permanent structures on the suit land for both residential and commercial purposes. This evidence was corroborated by that of the 3<sup>rd</sup> plaintiff where he stated that he started using and cultivating the suit land in 1960 while living with his mother and upon her death, he continued in his occupation and growing food crops thereon uninterrupted. The evidence of Aliga Julius also supported the above testimonies where he stated that in 2006, he started residing in one of the 3<sup>rd</sup> plaintiffs' houses situated on the suit land as a tenant. The evidence that the 3<sup>rd</sup> plaintiff's mother occupied and utilized the suit land unchallenged more than 12 years before coming into force of the Constitution or the fact that the 3<sup>rd</sup> plaintiff passed onto the plaintiff part of his interest was not rebutted by the 1<sup>st</sup> defendant. Therefore in my view, the 1<sup>st</sup> and 3<sup>rd</sup> plaintiff having acquired the interest of the late Karyamozi Jorin qualify to be bona fide occupants under **Section 29 (2) (a) and 29 (5) Land Act**.

The facts of the 2<sup>nd</sup> plaintiff's occupation are somewhat different. He claims to have purchased his interest in 1997 by purchase from one Maama Shaban and developed it with a house and numerous rentable rooms in which he resided with his family. It is not explained who Maama Shaban was and how she came to acquire the interest that she subsequently sold to the 2<sup>nd</sup> plaintiff. Again, although his acquisition was purchased for a stated value, no agreement of sale was adduced in evidence. Certainly residing on the land since 1997 (eight years before the Constitution came into force) would not qualify the 2<sup>nd</sup> defendant as a bonafide occupant. Further, no evidence was adduced to show that him or his predecessor in title was a dispossessed customary tenant or one, who entered the land with the consent of the owner, to entitle him to be a lawful occupant. In summary, I hold that the 2<sup>nd</sup> plaintiff failed to prove that he was either a bonafide or lawful tenant on the suit kibanja at the time of his eviction.

It was an agreed fact that on 4/4/08 the three plaintiffs (and others) and their families were evicted from the suit land by the defendant and her agents. The defendant in her written

statement of defence did not deny their participation in the eviction and claims that the eviction was lawful because the plaintiffs were illegal encroachers on a railway reserve and it was carried out after several formal and informal notices to the plaintiff.

I have already found that the 2<sup>nd</sup> defendant had no proven interest to protect. However, even in that status, the legality of his eviction is doubtful as I shall explain later in my judgment. With respect to the 1<sup>st</sup> and 3<sup>rd</sup> plaintiff, their occupation was deemed lawful and under the law they would be entitled to security of tenure on the portion of the land that they occupied and as such, their eviction could only be achieved through lawful means.

Firstly, nothing was shown in the defendant's pleadings that they were the registered owners of the suit land or that the plaintiffs occupied land directly under her control. Secondly, even if this court were to believe that the defendant had control over the said land and the railway line running through it, it was never shown that the three plaintiffs were physically in illegal encroachment of a particular portion thereof so as to invite eviction. Thirdly, it appears that the **Uganda Railway Corporation Act Cap 331** did not make provision for actions against persons deemed to be encroaching upon or obstructing transport services being offered by the corporation. Instead, under Section 34, provision is made for circumstances under which the corporation can enter land to prevent accident; Section **34 (1) (a)** of that Act stipulates that;

*“The corporation, or any authorized employee may, for the purpose of preventing the occurrence of any accident, preserving the safe operation of any transport services provided by the corporation or repairing any damage caused by the accident enter upon any land to cut down or remove any tree or other obstruction, not being a building, which obscures the view of any fixed signal or which is likely to cause any obstruction or any danger to any such transport services; and...*

And under Section 34 (3) and (4) of the Act,  
*where any person erects any building which obscures the view of a fixed signal or is likely to cause an obstruction or a danger to any rail or transport service provided by the corporation the corporation may, unless that person has previously obtained the approval of the managing director for the erection of the building or has modified it to the satisfaction of the managing director, apply to a Judge of the High Court for an order of the High Court for the demolition or modification of the building; or.... The court to which an application is made under subsection (3) may grant the order applied for and may make such order as to the payment of compensation and costs as it thinks fit...*”(My emphasis).

My emphasis above is meant to show that the 1<sup>st</sup> defendant did not prove that the plaintiffs' occupation was preventing safe operation of any transport services, or that the plaintiffs had or had not obtained the approval of the managing director for the erection of their buildings or, that she first obtained an order from the High Court before the demolition of the plaintiff's deployments. It is not even clear by their pleadings under what authority the defendant sought to carry out the eviction. The defendant was enjoined to adhere to the provisions of Section 34 since the land in question may have been one adjacent to a railway line and therefore under their control. Therefore, even though notice was furnished and received, the eviction of the plaintiffs from the suit land and demolition of their buildings or homes was unlawful since the defendant did not follow the law but instead merely acted upon the report of its field officers and a letter from the local council authorities of the area. The law requires that the defendant had to give the same treatment to the 2<sup>nd</sup> plaintiff whose occupation I have found doubtful.

In conclusion, I find that the eviction of all the three plaintiffs, was unlawful

### **Issue Three;**

#### **Whether the 1<sup>st</sup> defendant was liable for properties destroyed including homes and gardens.**

Counsel for the plaintiffs' submitted that the defendant did not follow the law in demolishing the houses of the plaintiffs' and confiscating their property and that, as a result, they would be entitled to compensation as provided for under **Section 48 of** the Act. I do agree with those submissions. The defendant in its pleadings admitted that with the assistance of the railway police, and local authorities they carried out the eviction on 4/8/08. That the police on the same date registered all property removed and kept them in their stores. She claimed that the three plaintiffs had by the time of filing the suit never claimed their properties. In my view, the police and local council authorities are deemed to have been working under the instructions of the defendant and are thereby considered to be her agents. Upon those facts therefore, I would hold that the defendant is liable to compensate the properties of the three plaintiffs destroyed during the eviction.

### **Issue Four;**

### **Whether there are any remedies available to any of the parties**

Generally, the plaintiffs contended in the plaint that they suffered special loss. Aliga Julius testified that a lot of the plaintiffs' property was destroyed including window frames and iron sheets. The 2<sup>nd</sup> plaintiff testified that his houses, crops and house hold property were destroyed. He also stated that his confiscated property amounted to Shs.4,000,000/= and that 60 out of 220 iron sheets and only four out of 40 doors that were confiscated, were returned to him. On the other hand, the 3<sup>rd</sup> plaintiff testified that all his household properties, iron sheets and doors were confiscated and as a result, he relocated to Namuwongo to reside with relatives. The 1<sup>st</sup> plaintiff claimed to have lost Shs.44,000,000/- in destroyed and confiscated property and had to reimburse rent to his tenants who were evicted. He also complained that his son sustained permanent injuries on his hand he was hospitalized and is now lame.

It is trite law that special damages must be specifically pleaded and strictly proved. It was held in the case of **Uganda Telecom Limited Vs. Tazanite Corporation SCCA No. 17 of 2004** that special damages cannot be recovered unless they have been specifically claimed, particularized and proved or unless the best available particulars or details have been put before the court and communicated to the party against whom it is claimed. In my view, the plaintiffs did not specifically plead the special damages in the plaint and neither did they strictly prove the same in their statements. There was no evidence of a medical report to confirm the injuries allegedly suffered by the son of the 1<sup>st</sup> plaintiff. The disclosed value of the properties destroyed or confiscated was not backed by any documentary evidence. Even the photographs alleged to have been taken of the destroyed items were never exhibited. Accordingly, the plaintiffs are not entitled to an award of special damages.

The plaintiffs also prayed for general damages as a result of the defendants' actions which caused them grave inconvenience and mental anguish. It should be noted that general damages are compensatory in nature in order, to reinstate the injured party in his former, but necessarily no better position, it was held In the case of **Associated Architects Vs. Christine Nazziwa Civil Appeal No.5 1981 (unreported)** that the person injured should receive a sum of money that would put him in as good but neither better nor worse position before the wrong was committed. I have already agreed with counsel for the plaintiff that under the circumstances of this case, the plaintiffs would be entitled to compensation.

I have found that the eviction of the plaintiffs was unlawful. The fact that their property was destroyed and confiscated, and one of them detained, has not been seriously rebutted. They must have suffered emotional pain, anguish, embarrassment and inconvenience as a result. However, the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs admitted that they regained possession of the suit *kibanja* and resumed occupation and have since 2010 been farming on the land.

On the other hand, the 3<sup>rd</sup> defendant claims to have relocated to Namuwongo to reside with relatives as after the eviction, he could no longer find means of survival. In those circumstances I would award general damages of Shs.5million to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs and Shs.7.5million to the 3<sup>rd</sup> defendant. I would also order the defendant to pay the full costs of the suit. Both the general damages and costs attract an interest 8% per annum being payable from the date of this judgment until payment in full.

In summary, judgment is entered for the plaintiffs with the following declarations and orders:-

1. The 1<sup>st</sup> and 3<sup>rd</sup> plaintiffs are bonafide occupants of the suit land.
2. The eviction of the plaintiffs was unlawful.
3. The defendants are ordered to pay to the plaintiffs general damages as follows;
  1. to the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, Shs.5million each,
  2. to the 3<sup>rd</sup> plaintiff shs.7.5million.
4. Costs of the suit and are awarded jointly to the plaintiffs.
5. General damages and costs are awarded at 8% per annum from the date of judgment until payment in full.

I so order.

**EVA K. LUSWATA**  
**JUDGE**  
**17<sup>th</sup> March 2015**