

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-CS-0003-2015**

**CAPTAIN SAM MASABA RONALD.....PLAINTIFF  
VERSUS  
GODFREY WERISHE.....DEFENDANT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

In this case the parties agreed before this Court that the suit land's boundaries be opened and a joint survey Report be submitted for determination of the issue whether there is a trespass. The outcomes of the report would be taken as final and court would only determine the issue of remedies (see proceedings of 14<sup>th</sup> July 2015).

Court granted parties the time to find a (joint) surveyor agreeable to both parties to undertake the said exercise and to report findings.

On 4<sup>th</sup> October 2016, the Court was informed by Counsel **Dennis Atwijukire** for plaintiffs that the Joint Survey report had been obtained and a copy thereof filed on court record.

On Court record is a Survey report dated 30<sup>th</sup> November 2015 and received in court on 17<sup>th</sup> December 2015.

The report was prepared by SENERGY SURVEYS & ASSOCIATES addressed to both Enoth Mugabi Advocates and Bakiza & Co. Advocates. The report indicates that it was received by **Enoth Mugabi** on 30. November. 2015 (Counsel for

defendants) and submitted to court by Bakiza & Co. Advocates vide their address to Court on 4<sup>th</sup> October 2016.

The report was admitted and matter adjourned for judgment.

The parties through their lawyers agreed on the following facts.

1. The Plaintiff is the registered proprietor of land comprised in LRV 3935 Folio 15 Plot 17 Wanale Road, Mbale Municipality.
2. The Defendant is registered proprietor of land in LRV 2732 Folio 8 Plot 15 Wanale Road Mbale.
3. Plaintiff's land and that of defendant are adjoining each other and separated by a perimeter wall constructed by the defendant.

The parties agreed to the following issues:

1. Whether the Defendant's perimeter wall trespasses on the plaintiff's land.
2. What are the remedies available to the parties?

As agreed the findings of the Survey answer Issue 1 in the affirmative because the report in its paragraph 3 of the findings notes that:

*“The Perimeter wall of Plot 15 encroached into Plot 17 by 2.2 meters taking approximately 0.02 acres.”*

The above findings therefore conclusively sort out the question of trespass. It is the finding of this court that the defendant's perimeter wall trespasses on the plaintiff's land by 2.2 metres (0.02 acres). Judgment is therefore entered against the defendant as prayed by the plaintiff for trespass on his land by construction of the said wall.

I will now move to the second issue, as to what are the remedies available to the parties.

The Plaintiff prayed for;

- i) A declaration that defendant is in trespass on plaintiff's land at Plot 17 Wanale Road- Mbale.
- ii) A permanent injunction restraining the defendants from trespassing on the plaintiff's land.
- iii) An order of demolition of the offending wall.
- iv) General damages and punitive damages.
- v) Interest at court rate.
- vi) Costs of the suit.
- vii) Any other remedy court may deem fit.

I hold that the following remedies accrue as of course following the event of the finding for the plaintiff herein:

- i) A declaration that defendant is in trespass.
- ii) A permanent injunction restraining defendants from continued trespass on plaintiff's land.
- iii) An order of removal/demolition of the said perimeter wall.
- iv) Costs of the suit.

The court was also requested for an award of general and punitive damages.

General damages are damages which directly arise from the natural or probable consequence of the act complained of (as per *Stroms v. Hutchinson (1905) AC 515*).

Exemplary damages also referred to as punitive damages represent a sum of money of a penal nature in addition to the compensatory damages given for the pecuniary

and mental suffering. They are deterrent in nature and aimed at curbing the repeat of the offending act. (See *Butterworth v. Butterworth (1920) P.126*).

General damages are awarded for pain, suffering and loss of amenities. These are non financial losses; and compensation cannot be specifically calculated but only evaluated on some basis.

In this case no guidance was given to this court as to what pain and loss the plaintiff suffered by this trespass. However the fact that this was prime land which the plaintiff was developing, this court finds that he suffered some loss accruing to him for not utilizing the land in question whose value has capacity to appreciate and if sold could fetch not less than 1,000,000/-, as at time of trespass, going by prevailing market rates.

I will therefore allow him an amount of 1,000,000/= (one million) per annum, from date of trespass in 2012 to 2016 being 4 year period- which is 4,000,000/= (four millions) only as general damages.

Given the fact that inspite of all amicable approaches, the defendant was adamant, yet the issue was brought to his attention, another shs. 1,000,000/= (one million) as punitive damages is given. This is therefore to allow plaintiff shs. 4,000,000/= as general damages and shs. 1 million as punitive damages.

The general damages will attract interest at court rate from date of judgment to payment in full. Judgment for plaintiff on terms as above.

**Henry I. Kawesa**  
**JUDGE**  
**04.11.2016**

Right of appeal explained.