

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 36 OF 2008

THE REGISTERED TRUSTEES OF
KAMPALA KINDERGARTEN ASSOCIATION :..... PLAINTIFF

VERSUS

1. LABARNUM COURTS LTD
2. AMINA HERSI MOGHA
3. PROMEN CONSULTS LTD
4. ARCH STEPHEN INYAGALA t/a
DIMENSIONS ARCHITECTS :..... DEFENDANTS

BEFORE: HON. JUSTICE. DR. FLAVIAN ZEIJA

JUDGMENT

The Plaintiff sued the Defendants jointly and /or severally for an order to open up boundaries of Plot 12 comprised in LRV 320 Folio 25, eviction orders or order for delivery of vacant possession of the portion of land encroached by the 1st Defendant, permanent injunction, mesne profits, compensatory damages and costs.

The Plaintiff's case is that they are the owners and registered proprietor of Plot 12 Kyaggwe Road, Kampala comprised in LRV 320 Folio 25 whereon is a school with amenities comprising of recreation and sports facilities. The 1st Defendant is the registered proprietor of the land adjacent to the suit land, known as Plots 3-11 Akii- Bua Close and Plot 35B Kyadondo Road. That sometime in 2007, the Defendants encroached and trespassed on the Plaintiff's land measuring approximately 0.061 Hectares by constructing unlawful structures using the 3rd

Defendant as an independent contractor under the physical inspection of the 2nd Defendant who was always on the ground to oversee execution of the illegal constructions. The 4th Defendant is the architect responsible for the design and plan of the unlawful constructions which have continued to waste away the Plaintiff's land. As a result of the Defendants' trespass, the Plaintiff has been denied and prevented access to its land, the Plaintiff's school children have no access to green and open space as part of their curriculum and expected deliverables by the Plaintiff. Further, the continued encroachment of the Defendants on the Plaintiff's land has compromised the safety of the school children thus endangering their lives and those of the teachers. The Plaintiff's efforts to stop the Defendants' activities have been in vain and instead the Defendants have continued to destroy, damage and waste the Plaintiff's land. The 2nd Defendant has personally resisted any attempts to stop the encroachment and has instead directed the contractors to continue with execution of the works. The Plaintiff has suffered loss of use of its 0.061 Hectares at a rate of UGX. 2,000,000 (Two Million shillings) per month since April, 2006.

In their joint Written Statement of Defense, the Defendants refuted the Plaintiff's claims and contended instead that the land in dispute does not form part of the Plaintiff's Plot 12 Kyaggwe Road but rather forms part of Plots Nos. 3-11 Akii-Bua and Plot No. 35B Kyadondo Road, Kampala whose developments were erected in compliance with its development plans which were duly approved by Kampala City Council of which the 1st Defendant is the registered proprietor. Further, that the Plaintiff has no cause of action against the Defendants jointly and /or severally.

Legal Representation

The Plaintiff was represented by Nyanzi, Kiboneka & Mbabazi Advocates whereas the Defendants were represented by Tareemwa & Co. Advocates.

At scheduling, the following facts were admitted. That the Plaintiff is indeed the registered proprietor of the land comprised in LRV 320 Folio 25 Plot 12 Kyaggwe Road Kampala measuring approximately 0.437 Hectares. The 1st Defendant is the registered proprietor of land known as Plots 3-11, Akii-Bua Close and Plot 35B Kyadondo Road. The land of the Plaintiff and that of the 1st Defendant are adjoining. The 1st Defendant has approved building plans for all the developments on the adjoining Plots 3-11 Akii –Bua Close and Plot 35B Kyadondo Road. There is on ground, a circular tank constructed belonging to the 1st



Defendant and forms part of its approved developments. There is a court Order dated 23rd September 2008. This particular court order was issued by the Registrar Land Division as then was, stopping any further constructions on the suit land and directing each party to go with their surveyors on site on Friday 26th September 2008 and work together with an independent senior staff surveyor from KCC.

The following issues were agreed upon by the parties at scheduling.

- a) Whether the Plaintiff's suit discloses a cause of action against the Defendants jointly and severally.
- b) Whether the Defendants' developments encroached on the Plaintiff's land and if so, whether they were illegal and unlawful.
- c) What remedies are available to the parties?

The first issue, if resolved in the affirmative has the effect of disposing of the whole case. I will therefore address it instantly. A cause of action is defined as every fact which is material to be proved to enable the Plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgment. **See; Cooke vs Gull LR 8E.P 116, Read v Brown 22 QBD P.31).** It is disclosed when it is shown that the Plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable. This position has been reiterated in the Supreme Court decision of **Tororo Cement Co. Ltd v Frokina International Limited SCCA No.2 of 2001.**

The question of whether a Plaintiff discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it. **See; Kebirungi v Road Trainers Ltd & 2 others [2008] HCB 72, Kapeka Coffee Works Ltd v NPART CACA No. 3 of 2000.**

In the current case, the Plaintiff pleaded in paragraph 4 of the Plaint that they are the registered owner of land comprised in Plot 12 Kyaggwe Road measuring 0.437 hectares whereat they operate a school, being in effective possession thereof. That sometime in 2007, the Defendants encroached and trespassed on part of the Plaintiffs' land measuring approximately 0.061 hectares and constructed illegal structures thereon. As a result, the Plaintiffs' school children have no access to open and green space as part of their curriculum and their safety is also compromised. In paragraph 6, the Plaintiff pleaded that they have



suffered loss of use of land to at a rate of UGX. 2,000,000 per month since the encroachment in April 2006.

It is settled that a cause of action arises when a right of the Plaintiff is affected by the defendant's acts or omissions. Therefore, by the Defendants' alleged encroachment and construction of illegal structures on part of the Plaintiff's land measuring 0.061 hectares, this would on the face of it imply that those actions adversely affected the Plaintiffs interest. In the result, a cause of action has been established and the preliminary point of law therefore fails.

Issue 2: Whether the Defendants' developments encroached on the Plaintiff's land and if so, whether they were illegal and unlawful.

By way of background, when this matter came up for mention on 23rd September 2008, the presiding judge ordered that no further constructions should be done on the disputed land, each party to go with their surveyors to the site on 26th September 2008 together with an independent senior staff surveyor from KCC. This was the beginning of this prolonged boundary dispute that has for nearly 14 years been unresolved, partly owing to the obstinacy of the previous surveyors involved in the matter. The first time the surveyors of both parties met on the site, contrary to Court's Orders, the surveyor of K.C.C did not appear. As a result, the boundary opening survey and Topographic Survey report dated 10th March 2008 was successfully contested for being non-compliant with the strict orders of court to the extent that a surveyor from K.C.C had not participated in the survey exercise.

Later on 12th June 2018, with the agreement of Counsel for both parties, court appointed Mr. Stephen Bamwanga of Associated Consulting Surveyors to open up boundaries for the disputed land and report to court within a period of 90 days. Basing on this, Counsel for both parties crafted nine (09) agreed (joint) terms of reference to guide the said surveyor. The agreed Terms of Reference included; verification of Certificates of Title for Plot 12 Kyaggwe Road and Plot 4 Akii-bua Close with their respective deed prints, verification of the 'instruction to survey numbers' for the said Plots that resulted in the issuance of their deed prints, opening boundaries of Plot 12 Kyaggwe Road and Plot 4 Akii-Bua Close and measuring their size, retrieving and studying the Minute of Allocation for Plot 12 Kyaggwe Road and Plot 4 Akii-Bua Close by the controlling Authority, perusing the cadastral sheets for the said Plots at Kampala Capital City Authority Office of Drawings & Mappings at Entebbe Vide Ref 46720 for both Plots, confirming the correct size for Plot 12 Akii -Bua Close and its I.S No. at the time of issuance of its title in 1954 vide sheet No.-3 under scale 1:2:500, finding out and

verifying survey records for the said Plots, ascertaining the developments comprised in the disputed portions, finding out whether there has ever been any subdivision and/or amalgamation of Plot 12 Kyaggwe Road and Plot 4 Akii- Bua Close.

Unfortunately, the appointed surveyor Mr. Stephen Bamwanga of M/S Associated Consulting Surveyors apparently issued a quotation which the parties considered to be exorbitant which prompted the appointment of Mr. George Wasene as the new surveyor who also turned evasive and declined to participate in the matter, allegedly for fear of conflict of interest. On that basis, on 9th July 2020, court directed Counsel for both parties to agree on another surveyor for the exercise and report back to court by 21st August 2020. In a similar trend, the parties agreed on Christine Asiimwe of Kampala Capital City Authority, who declined the commitment also on grounds of conflict of interest. Counsel for both parties then agreed on a one Dr. Richard Irumba who equally declined the appointment on the same grounds as his counterparts before, but he recommended another surveyor named Joseph Serunjogi of Geo –Earth Consultant Surveyors who by letter dated 19th August 2020 agreed to carry out the instructions of court with the commitment to complete the task by 4th September 2020. When the matter eventually came up on 24th September 2020 for submission of the survey report, the said surveyor who was in court requested for more time to conclude the survey.

The joint survey report was eventually placed on court record on 23rd February 2021. When the matter next came up on 25th February 2021 for formally filing of the joint survey report by the appointed surveyor, Counsel for the Defendants protested its relevance citing failure by the joint surveyor to follow the stipulated Terms of Reference. He therefore moved court to summon the surveyor for purposes of explaining the mode of execution of court's instructions. Court directed Counsel for both parties to resolve the pending aspects of Terms of Reference with the surveyor and have a fresh report filed before the next hearing date. By 16th April 2021 when the matter resumed, the amended report had not yet been filed as directed by court only for court to learn later on 30th April 2021 (the adjourned date) that the surveyor needed a court order in order to be able to access certain documents from the Commissioner Land Registration. The Court Order was accordingly issued directing the Commissioner Land Registration to avail certified copies of Certificates of Title for Plots 4 Akii- Bua Close, Plot 12 Kyaggwe Road together with cadastral sheets for both plots to the joint surveyor Mr. Sserunjogi of Geo-Earth Consultant Surveyors as per the agreed Terms of Reference dated 22nd October 2018 and the said surveyor to appear in court on 25th June 2021 with a completed survey report. Due to the surveyor's continued evasiveness, a Notice to show



Cause why he should not be arrested would later issue on 19th August 2022. The said surveyor eventually appeared in court on 12th October 2022 for purposes of tabling the survey report. Counsel for both parties were given an opportunity to cross examine him on the report.

Evidence

When asked to present the report, the joint surveyor Mr. Sserunjogi testified that he got instructions from this court dated 17th August 2020 to determine boundaries of land comprised in Plot 12 Kyaggwe Road and Plot 4 Aki-Bua Close. He obtained photocopies of the said two Plots from the court record and proceeded to Entebbe Department of Surveys and Mapping to get more information about the said Plots. He got the print of Plot 4 Aki-Bua Close and instructions which were issued to carry out a survey creating that Plot. Mr. Sserunjogi further testified that he went ahead to obtain coordinates for Plot 12 Kyaggwe Road which he used on ground to determine the extent of boundaries for each Plot. It was his firm testimony that per the coordinates obtained from Entebbe, the developer of Plot 4 Aki-Bua Close encroaches on Plot 12 Kyaggwe Road by an area of approximately 0.16 acres which is equivalent to 16 decimals.

The Witness further confirmed that whereas the photocopy of the Certificate of Title of Plot 12 Kyaggwe Road shows that the Plot is still intact, the cadastral sheet shows that there was some subdivision which is shown to have been amalgamated on Plot 4 Aki-Bua Close but the Plot Numbers of the two Plots in issue did not change to reflect the subdivision. All in all, the land titles for Plot 12 Kyaggwe Road is still intact having an area of 0.387 hectares from the computed coordinates and Plot 4 Aki-Bua Close has an area of 0.171 hectares which is still indicated on its title.

During cross examination by Counsel for the Defendant, the witness testified that though not certified, the cadastral sheets relied upon were obtained from Entebbe Office of Drawings & Mappings and firmly stated that if Counsel had doubts, he could go to the same office and cross check for himself. He confirmed that the Instruction to Survey that was used to create Plot 4 Aki-Bua Close obtained from Entebbe was issued on 18th April 2005 by then Commissioner of Surveys and Mappings Mr. Eria Byesiza while the Instruction to Survey for Plot 12 Kyaggwe Road was not there because this particular Plot was created in the year 1939 when Instructions to Survey (IS) were not being issued.



When asked how titles in the 1930s were being created, the Witness stated that by 1939 plane tables were being used. The new UTM IS system came into existence in 1956. Following the Court Order directing the Commissioner Land Registration to avail titles for the two Plots to the surveyor, the Commissioner was only able to avail certified copies for Plot 12 Kyaggwe Road because that of Plot 4 Akii-Bua Close was missing. He maintained that whereas the cadastral sheet shows a subdivision, there is no record of the same in the archives at Entebbe Office of Surveys and Mapping.

When Counsel for the Defendant prayed for an adjournment to enable his client produce an original Certificate of Title for Plot 4 Akii-Bua Road, I was disinclined to grant that prayer on the basis that the photocopies of the Certificates of Title used in conducting the survey exercise were obtained from the court record. In fact, these are the same copies that Counsels for both parties filed in their trial bundles as part of their evidence. The Photocopy for Plot 4 Aki-Bua Close was particularly filed by Counsel for the Defendants on behalf of his client the 1st Defendant. I however allowed Counsel for the Defendant three days to personally go to Entebbe Office of Surveys and Mapping and bring any contrary evidence for court's consideration. This, he has failed to do up to the time of writing this judgment.

During submissions, counsel for the Defendants framed what would in my view appear to be "Grounds of Appeal" disguised as grounds of contestation in which he also canvassed arguments in respect to issue 2.

Counsel for the Defendant submitted that this court did not accord the Defendants an opportunity to lead evidence in chief and instead adopted a procedure that is peculiar, unconstitutional and disallowing the Defendants a right to a fair hearing. He faulted this Court for sanctioning a joint survey report dated 15th February 2021 thereby failing to comply with the agreed Terms of Reference for opening Boundaries for Plot 12 Kyaggwe Road, Plots 3-11 Akii-Bua Close in as far as the findings of the surveyor did not comply with Clause 4 and 8 of the Agreed Terms of Reference that had been agreed upon by both parties to guide the surveyor in execution of his duties. Counsel for the Defendants went ahead to fault this Court for departing from its earlier orders directing the Surveyor to file a revised report capturing all the Terms of Reference and that the said Surveyor relied on an expired Certificate of Title for Plot 4 Akii- Bua Close.

Counsel for the Defendants contended that the dispute cannot be exhaustively determined based on a Surveyor's Report solely since there is a pending suit vide Civil Suit No. 125 of 2011 where the Plaintiff seeks to reclaim the suit land comprised in Plot 3-11 Akii- Bua Close and Plot 35B Kyadondo on which the 1st Defendant seeks to have it consolidated with this suit to enable the court determine the issues in controversy to avoid a multiplicity of suits between the Plaintiff and 1st Defendant. I have checked the record and I am unable to trace the said Civil Suit No. 125 of 2011 even though in his submissions, Counsel for the Defendants stated that it was attached to the submissions and marked as "G". However, I have read and perused all attachment on the submissions and there is no attachment marked "G".

It was still Counsel for the Defendants' contention, while making reference to the 1st Defendant's Certificates of Title in the trial bundle from page 1-18 and 25-26 that the deed points upon which the Defendant's Development Plans were approved are clear and as such, the documents need to be subjected to thorough interrogation upon the same being tendered in as evidence in a full trial. That court cannot close out the Defendants from prosecuting this case upon furnishing court with a deed plan dated 18th September 2008 that forms the crux of the matter and without ascertaining the developments on the disputed property by way of a locus visit and the circumstances under which they were erected.

Counsel for the Defendants vehemently argued that Officials from the Department of the Commissioner Land Registration are in a better position to explain the circumstances under which the subdivision on Plot 12 Kyaggwe Road was conducted and as such the case merits a full hearing.

It was also Counsel for the Defendants' contention that proceeding to deliver judgment solely based on the Surveyor's report will prejudice the 2nd, 3rd and 4th Defendants who were illegally joined to this suit. They should therefore be accorded a fair hearing. That the Defendants should be accorded an opportunity to present their witnesses to wit; Amina Hersi Moghe, Director Physical Planning Kampala City Council Authority, Secretary Kampala District Land Board, Commissioner Land Registration who were involved in title processing for Plot 4 Akii-Bua Close.



Counsel for the Defendants further contended that the Plaintiff is seeking for an award of mesne profits totaling to UGX. 384,000,000 which in itself demands for a full hearing since the said profits must be specifically proved by the Plaintiff upon leading evidence in a full trial. This court cannot therefore award mesne profits without evidence in proof thereof. In this regard, Counsel cited the case of ***Crane Bank Ltd vs. Nipun Narottam Bhatia S.C.C.A No. 02 of 2014***

Counsel for the Defendants also made reference to the case ***Ali Ahmad vs. Mohamad Ahmad & 2 Ors HCCS No. 38 of 2011*** in support of the proposition that this court should not rely solely on the survey report to arrive at a decision. Counsel for the Respondents further cited articles 28(1) and article 44 (c) of the Constitution of the Republic of Uganda and the case of ***Bakaluba Peter Mukasa vs. Namboozie Betty Bakireke (Supreme Court Election Petition Appeal No. 04 of 2009)*** to buttress his arguments on the Defendants' entitlement to the right to a fair hearing.

I have had the opportunity of examining the authorities provided by Counsel for both parties. Specifically, the case of ***Ali Ahmad vs. Mohamad Ahmad & 2 Ors HCCS No. 38 of 2011*** is distinguishable from the current case on several fronts. Firstly, in that case, court was disinclined to pronounce itself finally on the suit before hearing any other issues arising from the pleadings and concluded that forensic examiner's report will obviously form part of the judgement after the suit has been heard in its entirety due to the following reasons;

Section 26(1) of the Judicature was inapplicable in that case. It provides:

- (1) *The High Court may, in accordance with the rules of court, refer to an official or special referee for inquiry and report any question arising in any cause or matter, other than in a criminal proceeding.*
- (2) *The report of an official or special referee may be adopted wholly or partly by the High Court and if so adopted may be enforced as a judgement or order of the High Court."*

There, the court did not exercise any discretionary powers under the rules of court to refer any matter to an official or special referee and section 26 (1) of the Judicature Act was therefore inapplicable. This is because the reference was made by consent of counsels albeit simply on the advice of the court. However, in this particular case, Counsels for both parties did not only agree to a joint surveyor but the court also exercised its discretionary powers to direct Counsels for both parties to agree on joint surveyor. When Counsels eventually zeroed

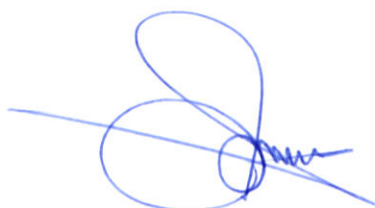


down on Mr. Joseph Serunjogi of Geo –Earth Consultant Surveyors, court exercising its discretion directed the said surveyor to conduct a survey to determine the boundaries of the disputed land and report to court. Then on, the surveyor became an Officer of Court within the meaning of section 28 of the Judicature Act. Section 28 of the Judicature Act provides that in all cases of reference to a referee or arbitrator under this Act, the referee or arbitrator shall be deemed to be an officer of the High Court and, subject to rules of court, shall have such powers and conduct the reference in such manner as the High Court may direct.

In this case, all that the referee was required to establish in this court's view was the boundary of Plot 4 Akii- Bua Close as distinct from the boundary of Plot 12 Kyaggwe Road. Once the boundaries were clearly established, liability was determined.

The mode of investigation by the referee was by application of the agreed Terms of Reference. Counsel for the Defendants however faulted the Joint Survey Report for not complying with Terms 4 and 8 which required the surveyor to firstly retrieve and study the minute of allocation for Plot 12 Kyaggwe Road and Plot 4 Akii-Bua Close and secondly ascertain the developments comprised in the disputed portions of the said Plots. During examination, Mr. Sserunjogi gave uncontroverted evidence in regards to Instruments to Survey (IS) for both Plots of land. He rightly testified that the IS that was used to create Plot 4 Akii-Bua Close is AMM/1/1521 issued on 18th April 2005 by then Commissioner Mr. Eria Byesiza was attached to the survey report. As regards the IS for Plot 12 Kyaggwe Road, the witness testified that in 1939 when the said Plot was created, the modern new UTM IS system was not yet available so by then plane tables were being used. It is therefore inconceivable for Counsel for the Defendants to argue that the report did comply with Term of Reference No. 4 yet he even cross examined the witness on the same. It is also evident from the agreed facts in the Joint Scheduling Memorandum that on the disputed land is a circular tank constructed thereon belonging to the 1st Defendant. In the same regard, the argument that the surveyor relied on an expired Certificate of Title holds no water for the reason that he used a copy filed on court record by Counsel for the defendants. Besides, when a title expires, the deed plan remains the same. The Title description does not change.

The second distinguishing factor between the case ***Ali Ahmad vs. Mohamad Ahmad (supra)*** and the current case is that in that case, there was no order of court that the specific issue Court referred to the forensic referee would finally resolve the dispute. It was only implied by counsels that the dispute could be resolved through such examination/investigation and report. In this case, however, it is on record that court ordered on 19th August 2015 that the survey report shall be a conclusive guide for Court to pronounce judgment in the matter.



Sub section 2 of section 26 of the Judicature Act is to the effect that the report of a referee may be adopted wholly or partly by the High Court and if so adopted may be enforced as a judgment or order of the High Court. If there are any other matters for resolution per the pleadings outside the scope of what was referred to the expert, the same can be determined on formal proof. It therefore goes without saying that the judgment (partial or whole) envisaged under section 26(2) of the Judicature Act is only judgment in respect to matters referred to the expert and nothing extraneous. As such, I agree with Counsel for the Defendants that the question of mesne profits or special damages cannot be determined by the findings of the report without other formal evidence.

Counsel for the Defendants also faulted court for departing from its earlier Order dated 23rd September 2008 wherein it was agreed and Ordered that each party shall go on the site and work together with an independent senior staff surveyor from KCC. Touching this, I have already narrated how all efforts to deploy a KCC surveyor served nothing more than retarding the progress of the case for approximately 14 years, to the extent that Counsels for both parties got frustrated themselves and in agreement with court embarked on a quest for a jointly agreed surveyor (Geo –Earth Consultant Surveyors) who acted on court's direction on the basis of agreed Terms of Reference drafted by Counsels for both parties. In the opinion of this court, failure to take the requisite action to identify another surveyor would have dragged on this case longer in contravention of the well-known tenets of a fair hearing. Article 28(1) of the Constitution of the Republic of Uganda, 1995 as amended provides that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

Worthy to note also are the provisions of section 98 of the CPA, Cap 71 and Section 33 Judicature Act which cloth this court with wide discretionary powers to grant remedies. Section 33 is coined in the following terms:

"The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided."



Under Section 98 CPA, the inherent power of court is saved in the following terms;

“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

These provisions vest the High Court with wide discretionary and inherent powers respectively to grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it.

In this particular case, to avoid any further delays, this court therefore had to invoke its inherent powers under section 98 of the Civil Procedure Act, Cap 71 and section 33 of the Judicature Act, Cap 13 to meet the ends of justice and to prevent a further abuse of court process through the evasive ploys of surveyors and their enablers. Court was also mindful of the consent by the parties and it is on record that court ordered on 19th August 2015 that the survey report shall be a conclusive guide for court to pronounce judgment in the matter. This was long before I took on this matter.

Consequently, the report of the joint surveyor Mr. Sserunjogi of Geo-Earth Consultant Surveyors filed in this court on 23rd February 2021 is adopted as this court's judgment under section 26(2) of the Judicature Act in the following terms:

The 1st Defendant's land comprised in Plot 4 Akii-Bua Close encroaches on the Plaintiff's Plot 12 Kyaggwe Road by approximately 16 decimals.

I now make the following Orders;

- a) The land belonging to the Plaintiff comprised in Plot 12 Kyaggwe Road is 0.387 hectares while land belonging to the 1st Defendant comprised in Plot 4 Akii-Bua Close has an area of 0.171 hectares as reflected on their respective titles.



- b) The 1st Defendant encroaches on the Plaintiff's land by approximately 16 decimals as per the referee's findings. Mr. Sserunjogi of Geo-Consultant Surveyors should effect a clear demarcation between the two Plots in compliance with the findings of the survey.
- c) An order for vacant possession issues in favor of the Plaintiff for the 16 decimals encroached upon by the 1st Defendant. This should take effect after Order (b) above has been complied with, but in any case in not less than 6 months from the date of this judgment.
- d) A permanent injunction issues restraining the Defendants, their agents, servants, workmen and all those claiming under them and /or deriving authority from them from trespassing, encroaching, interfering and /or in anyway dealing with the Plaintiff's land.
- e) Regarding the liability of the 2nd-4th Defendants and the orders for mesne profits, compensatory and /or aggravated damages and general damages, counsel for the plaintiff's submitted in Court on October 12, 2022 that no further evidence was necessary. He did not call evidence to prove liability for 2nd, 3rd and 4th defendants neither did he adduce evidence to warrant award of mesne profits, compensatory and /or aggravated damages and general damages. As a result, these fail. Consequently, the case against 2nd, 3rd and 4th defendants is dismissed with each party bearing own costs.
- f) The plaintiff is warded costs of the suit against the 1st defendant.

Dated at Kampala this 27th day of January 2022



Flavian Zeija (PhD)
PRINCIPAL JUDGE