

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO. 676 OF 2014

MUTUMBA MUSISI DAVID **PLAINTIFF**

VERSUS

LUBOWA STEPHEN **DEFENDANT**

BEFORE: HON. LADY JUSTICE CORNELIA KAKOOZA SABIITI

JUDGMENT

Background

1. The Plaintiff's claim against the Defendant was in trespass. It was the Plaintiff's case that the Defendant trespassed on his land comprised in Kyadondo block 214 plot 2160 located at Kisaasi Kasana Zone in Nakawa Division in Kampala district. The Plaintiff averred that he bought the suit land in 1997 from John Bata and took possession thereafter. He obtained a certificate of title to the same in 2006. However sometime around 2003, the Defendant occupied the land next to the Plaintiff and started construction thereon. The Plaintiff did not realise that the Defendant had trespassed on his land, until 2013 when the Defendant engaged a surveyor. Despite protests from the Plaintiff, the Defendant constructed on the Plaintiff's land claiming that it was his. The Defendant's structures have crippled the Plaintiff's plans to develop his land.

2. The Plaintiff sought; an order of eviction of the Defendant from the suit land; a permanent injunction restraining the Defendant from entering upon or otherwise

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interfering with the Plaintiff's quiet possession and enjoyment of the suit land comprised in Kyadondo Block 214 plot 216; general and aggravated damages; interest on the damages from the date of filing till payment in full; costs of the suit and any other relief that the court deems fit.

3. In his written statement of defence, the Defendant averred that the sale agreement on which the Plaintiff relied was tainted with forgeries as the suit land has never been the property of Mpaga. He further averred that he bought a plot of land in 2003 from Sebunya Badru, Haruna Lungovu and Navunga Lukiya at Kisaasi trading centre neighboring the Plaintiff's land. He took immediate possession of the same and was enjoying quiet possession of the suit land until 29th August 2014 when the Plaintiff reported a case of criminal trespass against him at Kiira Road Police Station vide CRB1091/2014. The file was closed for lack of evidence since he had genuinely purchased the plot he was occupying which neighbors the Plaintiff's land.

Issues

4. The following issues were agreed upon for determination under the joint scheduling memorandum:
- i) Whether the Defendant trespassed on the Plaintiff's land.
 - ii) What remedies are available to the parties.

Witnesses

5. Hearing was by witness statements in lieu of examination in chief. The Plaintiff testified as PW1 and led evidence through No. 26703 D/sgt Kyerituha B. Fabian as PW2; Mr. Mutalya Fred, the Surveyor as PW3; and Ssengendo David as PW4.

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Representation

6. The Plaintiff was represented by M/s. Kagoro Associated Advocates and Defendant was represented by M/s. Byamugisha, Lubega, Ochieng & Co. Advocates.
7. The Plaintiff bears the burden to prove to the satisfaction of Court the averments, if he is to succeed as required under section 101 of the Evidence Act. This burden is on a balance of probabilities.

Issue No.1: Whether the Defendant trespassed on the Plaintiff's land.

8. In **Civil Appeal No. 0009 of 2017 Odyek Alex & Anor V. Gena Yokonani & Ors**, the court held that "trespass to land occurs when a person directly enters upon land in possession of another without permission and remains upon the land, places or projects any object upon the land (see *Salmond and Heuston on the Law of Torts*, 19th edition (London: Sweet & Maxwell, (1987) 46). It is a possessory action where if remedies are to be awarded, the plaintiff must prove a possessory interest in the land. It is the right of the owner in possession to exclusive possession that is protected by an action for trespass. Such possession should be actual and this requires the plaintiff to demonstrate his or her exclusive possession and control of the land. The entry by the defendant onto the plaintiff's land must be unauthorised. The Defendant should not have had any right to enter into Plaintiff's land.

9. The court also held in **Odyek Alex & Anor V. Gena Yokonani & Ors** that "an

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rights rather than proprietary rights. Trespass is an unlawful interference with possession of property. It is an invasion of the interest in the exclusive possession of land, as by entry upon it. It is an invasion affecting an interest in the exclusive possession of his property. The cause of action for trespass is designed to protect possessory, not necessarily ownership, interests in land from unlawful interference. An action for trespass may technically be maintained only by one whose right to possession has been violated. The gist of an action for trespass is violation of possession, not challenge to title. To sustain an action for trespass, the plaintiff must be in actual physical possession.”

10. It was the Plaintiff's testimony that on 21st January 1997, he entered a sale agreement with the late John Bata Mukasa from whom he bought 12 decimals of a kibanja. The sale agreement was admitted in evidence as P.Exh 1. He later bought additional 13 decimals Ssengendo David and Ssenoga Christopher, the beneficiaries of the estate of the Late Ham Walusimbi vide an agreement dated 24th May 1998. After subdivisions, he obtained a certificate of title. The certificate of title was admitted in evidence as P.Exh. II and the transfer forms admitted in evidence as P. Exh. IV. He was utilizing the suit land since 2000 and was constructing his house in 2001 when his wife passed away and he got depressed and was unable to continue with the construction. When he recovered from the depression, he returned to the site and found that the Defendant was already on the suit land. He engaged a surveyor who discovered that the Defendant was encroaching on his land. He reported to Kira Road Police vide CRB 1091/2014, the matter was investigated and later referred to civil court. A sale agreement dated 9th February 2000 and its translation was admitted in evidence as P. Exh.III.

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11. In cross examination, the Plaintiff maintained that the Defendant trespassed on his land and the survey report shows that it is 5 decimals of encroachment. The Defendant built on the Plaintiff's plot in 2003 but he did not stop him because at the time, he had other problems. He bought land of 12 decimals from Mr. Tom Bata Musaka who was a kibanja holder but he was not sure of the size. This is part of the property. At the time of purchase, the land was titled plot 643 block 214 and registered in the names of the Administrator General. It was subdivided into plots 2160 and 2159. The original plot was subdivided into plots 2159 for James Mulamba and 2160 for the Plaintiff. The residue 2161 for the landlord Sengendo. P. Exh.II has the size of 0.104 hectares (0.25 acres).

12. Further that P. Exh.1 does not refer to any description of land in the sale agreement dated 21st July 1997 between the Plaintiff and John Bata Mukasa. The registered proprietor of the land was the Late Hamu Walusimbi Mukasa. P. Exh.1 refers to land registered in the names of Mpanga and the sale agreement is faulty. He admitted that he did not know the registered proprietor and only got to know from the land registry. He first paid Ug.shs. 1.2million for 12.5 decimals. After knowing the registered proprietor, he bought more 13 decimals at Ug.shs. 1.65million. the date of transfer from the Administrator General to Tom Bata is 11/10/2001. The date of transfer from Tom Bata to Mutumba Musisi is 21/01/2006. The registration date on the title shows Bata Tom was registered on 3rd April 2006 at 8:15a.m. The Plaintiff was registered also on 3rd April 2006 at 8.07a.m. The discrepancy in time on the title is an error of the land registry.

13. It was also his testimony that he did not immediately use the land because there were family wrangles. He went on the land in 2000. The Defendant came in 2003.

When he took possession of the land, he came at the same time with Mulamba.

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The Defendant is between the Plaintiff's land and that of Mulamba. He found them there. He denied having any knowledge of Agnes Nakazzi, Sebunya Babu or Haruna Lugonviu. The land the Defendant bought was the Plaintiff's but he did not sell it to him.

14. In answering questions from court, it was Plaintiff's evidence that John Bata Mukasa died in 2001 after signing transfer forms. The children of Haruna Walusimbi whom John Bata got the land are Ssengendo David and Ssenoga Christopher.

15. It was PW2's evidence that in 2014 while attached to Kiira Road Police Station, he was instructed to investigate a complaint of criminal trespass vide Kiira Road CRB 109/2014 relating to land comprised in Kyadondo block 214 plot 2160 measuring approximately 0.104 hectares registered in the name of the Plaintiff. From the records availed to him, he discovered that the Plaintiff bought the land on 21/01/1997 and 24/05/1998 from John Bata Mukasa. After reviewing the documents pertaining to the disputed land and interviewing witnesses presented by both parties, he established that the seller was the same and that the Plaintiff was the first to buy the land on 21/01/1997 and 24/05/1998 whereas Nakazi bought the same land on 26th August 1998.

16. Further that he also discovered that the Defendant bought a larger piece of land than what he is currently occupying but he has not complained. He also discovered that at the time John Bata Mukasa sold to Nakazi Agnes, there was a remaining kibanja neighbouring the Plaintiff at the lower part of the suit property. That if truly John Bata Mukasa sold to Nakazi Agnes a piece of land in Kisasi, it could have been the piece of land at the lower part of the suit land since at the time of sale, the agreement was made in Buwate and neither party was on site to

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locate the exact piece of land that was being sold. After investigations, he made a police report. The sale agreement for block 214 plot 643 dated 24th May 1998 was admitted in evidence as P. Ex. VI-1 and the police report dated 5th December 2014 was admitted as P. Ex. VII-2.

17. In cross examination, it was his evidence that during his investigations, he found that plot 2160 block 214 kyadondo was in the names of the Plaintiff. His findings were that Mutumba had purchased two pieces of land. The Defendant had two land agreements. The said pieces of land were sold by Bata Tom to Nakazzi Agnes but it had earlier been sold to Mutumba David. Nakazzi Agnes bought from Bata Tom and sold to Stephen Lubowa. He visited the scene but the disputed land was for Mr. Plaintiff. The Resident State Attorney advised that parties seek civil redress hence the matter before court.

18. It was further his testimony that he investigated the land title block 214 plot 2160. He saw two agreements in respect of the sale of the land for the Plaintiff. Sale agreement dated 24th May 1998 signature of Bata Mukasa on the second and first Agreements are the same. Size of land on application is 0.04 hectares but same plot and block number. It has erased/crossed plot 643. The office of the Registrar crossed out plot 643 because it was subdivided into plots 2160, 2161 and 2159. That is why the acreage was reduced. He did not come across two titles from plot 2160.

19. Additionally, it was PW2's evidence that the application for consent to transfer the land was a consolidation of Ug.shs. 5million, which does not appear in any of the sale agreement. P.3 the sale agreement mentions plot 643 but it looks as if the zero was turned into a three. Bata was registered on title on 3rd April 2006 at 8:15a.m and the Plaintiff got registered on 3rd April 2006 at 8:07 a.m. a reading

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of the two shows that the Plaintiff got registered early in time but was after Bata. The Defendant is occupying less land than what was purchased. He did not come across plot 640 in his investigations.

20. In re-examination, it was his evidence that the Defendant bought a piece of land from the children of Agnes Nakazzi who bought a piece of and measuring 0.12 ½ acres across from John Bata. Bata is the same person who sold the 2 acres to the Plaintiff and the last agreement was made in May 1998. From his comparison of the agreements John Bata had no right to sell the same piece of land to Agnes which he had already sold to the Plaintiff. For the land sold to Agnes, the agreement was made in Buwaate and they did not go on the ground to ascertain the actual land that was sold. Bata had a residue balance on plot 2161 block 214. The size transferred from Administrator General to Bata was bigger than what was transferred to the Plaintiff.

21. It was PW3's evidence that he is a land surveyor by profession. John Bata Mukasa owned a kibanja on plot 643 block 214 at Kisasi Kyadondo, part of which he sold to the Plaintiff and James Mulamba. After the final payments, John Bata took them to Ssendendo to introduce them as the land owners. Mr. Ssendendo suggested a site visit which PW3, James Mulamba, the Plaintiff, Seengeno David and his surveyor conducted. Ssendendo and John Bata agreed to divide the plot into portions of 0.48 acres and 0.55 acres. The 0.48 acres were given to John Bata as compensation for buying ownership and the 0.55 acres were taken by Ssendendo as the land owner. Ssendendo later took John Bata Mukasa to the Administrator General's office for signing the transfer forms on 9th February 2000. John Bata then signed the transfer forms for both Mulamba James and the Plaintiff.

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22. After signing the transfer forms, PW3 prepared a survey report and made subdivisions out of the 0.48 decimals into 2 plots which are: 0.20 Acres (plot 2159) belonging to James Mulamba and 0.25 acres (plot 2160) belonging to the Plaintiff. After the subdivisions, two land titles were issued in the names of the Administrator General which was later transferred to John Bata Mukasa's names and later transferred them into the names of the Plaintiff and Mulamba James. After processing of the two titles, PW3 called the owners James Mulamba and the Plaintiff and gave them their titles. He later got a call from the Plaintiff claiming that one of his neighbours was encroaching on his land and after opening the boundaries, it was confirmed that the Defendant was indeed encroaching on the land. PW3 prepared a survey report. Court noted that PW3 was present in court when PW2 was testifying.

23. In his cross examination, PW3 testified that P. Exh 1 the sale agreement states that the land measures 0.12 acres which is about 0.04 hectares. The size on the certificate of title is 0.104 hectares which means that the title has more land from the sale agreement. P. Exh 1 does not reflect the plot number because it is a kibanja. He did not see the certificate of title with Mpanga as a land owner. He maintained that the encroachment was of 0.05 acres and court should rely on the encroached area in the report.

24. In re-examination, it was his evidence that he was not present when the two sale agreements were being signed. An individual can own a kibanja on titled land. In answers to questions from court, he maintained that boundary opening for plot 2160 block 214 size of land is 0.104 hectares. There was encroachment by the Defendant on plot 2160 by 0.05 acres.

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25. It was PW4's evidence that he came to know the Plaintiff through John Bata Mukasa who was a kibanja holder on the land measuring 1 acre and 4 decimals in 1997. John Bata had sold the said kibanja to the Plaintiff and Mulamba James and as a landlord of that kibanja, it was in the best interest of PW4 to know the new owners of the kibanja. PW4 later visited the site to measure and know the size of plot 643 in December 1999 in the presence of his surveyor, James Mulamba, the Plaintiff, PW3, John Bata Mukasa.

26. They first measured the then plot 643 which was to be subdivided and from it came plots 2159 for James Mulamba, 2160 for the Plaintiff measuring 25 decimals and 2161. PW4 suggested that the new owners pay Ug.shs. 3,000,000/= so that John Bata Mukasa could transfer legal interest to the kibanja holder but the purchasers did not have the money so the Plaintiff and Mulamba James opted to pay for what they had purchased and so the agreement of 9th February 2000 was made. Thereafter he took John Bata to the Administrator General where transfer forms were signed into his name and the title issued in the Administrator General's names on 6th November 2001. Later it was transferred into John Bata who in turn signed transfer forms in favour of the Plaintiff on 5th May 2001 and the title transferred in his names on 3rd April 2006.

27. In cross examination, he testified that he knows Charles Mpanga as the previous administrator of Ham Walusimbi. Charles Kizza was PW4's brother who was the heir of Ham Walusimbi. He did not know of the three above owned the suit land. Bata Mukasa was a kibanja holder on the land measuring 1 acre and 4 decimals. The registered proprietor of the land where Bata had a kibanja was the administrator General it is true that Bata sold the land to Mutumba and Bata told PW4 that he had sold off the land. P. Exh. 3 was in respect of land at Kisaasi.

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And Senonga Christopher is PW4's brother who did not sign on the agreement but was aware of the arrangement. He was not around at the time the agreement was signed. They divided the land and Bata got 48 decimals and they remained with 0.55 decimals. Bata sold the land he got to the Plaintiff. He has not come across any agreement showing that Ham Walusimbi is the registered proprietor.

28. It was DW1's evidence that in 2003, he purchased a plot measuring 19.8ft width by 118ft length from Sebunya Badru, Haruna Lugonvu and Navuga Lukiya neighbouring the Plaintiff, James Mulamba and the road from Ntinda to Kyanja. At the time he inspected his plot before purchase, it was fenced off between the Plaintiff and James Mulamba and it had a two roomed house belonging to the Late Agnes Nakazi and the mother of Sebunya Badru, Haruna Lugonvu and Navuga Lukiya who sold to him the plot. He completed the two roomed house and started living in it. He was in occupation of his plot since 2003 uninterrupted till 29th August 2014 when the Plaintiff reported a case of criminal trespass at Kira police station. He denied trespassing on the Plaintiff's land. Before purchasing the suit land, he got to know of information concerning the suit land as the secretary for defence when their LC1 committee received a letter from the Administrator General's office regarding a land wrangle over the suit land between John Mukasa Bata and Simon Kisitu.

29. In cross examination, he maintained that he bought land from Haruna Lungovu, Sebunya Badru and Navuga Lukiya. The land belonged to their mother who is deceased and bought it as a kibanja. They did not show him any letters of administration for the mother's estate but they showed him the agreement on which their mother had acquired the suit land. (it was exhibited as P.IDI). When he bought the land, he was not told about the registered

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ownership but it was in the names of Bata. Nakazzi bought 12.5 decimals and the land sold to him was 19.8ft by 118ft. He knew the owner of the land before she died. In re-examination, it was his evidence that the children of Nakazzi told him that they had been permitted by their father to sell to me the land and there has never been any disagreement in the family of Nakazzi over the land they sold to him.

30.DW2 testified that on 23rd March 2003, himself, and his siblings Sebunya Badru and Navuga Lukiya sold a plot of land to Lubowa Stehen in Kisaasi measuring 19.8ft X 118 ft which was originally for their mother Agnes Nakazi. Their mother had purchased the plot from Bataliwo John and she constructed a two roomed house which was incomplete at the time of her death. The Defendant completed the house, moved in and also constructed other houses thereon. At the time they sold their plot to the Defendant, James Mulamba and the Plaintiff were still constructing on their plots but theirs remained in the middle fenced. Their plot never had any dispute before their mother acquired it in 1998 upto the time they sold it in 2003 to the Defendant. The Plaintiff does not have any claim of right over the said plot since it does not form part of his land at all. The plot was sold to the Defendant with very clear demarcations and the Plaintiff was around when they took the Defendant around the land before he purchased it.

31.In cross examination, DW2 maintained that himself and the siblings sold the land to the Defendant on 23rd March 2003 and they entered into an agreement of sale with the Defendant. Their mother had given the three of them the kibanja during her lifetime. She donated to them when she was alive but did not give it to them in writing. Their mother had the agreement on which she

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had bought and they gave it to the Defendant. The plot their mother bought had no title. It was with the Administrator General but she bought titled land. They could not sell to the Defendant titled land because they had no title.

32. Further that the sale agreement (P.Exh.1) sale agreement between John Bata and the Plaintiff is 21st January 1997 and the date on the PIDI is 26th August 1998. From the dates, it shows that the Plaintiff and the Bata agreement came first in 1997. He did not make a search on Bata's land because he did not have title for the land. He did not know the plot number of the plot they sold to the Defendant and they sold a kibanja because they did not know where the title was.

33. In re-examination, it was DW2's evidence that looking at the two agreements dated 1998 and 1997, they may not have been referring to the same land because one does not have a plot number but by the same seller. The Plaintiff never challenged selling land to the Defendant. No one has ever challenged the same. In clarification to court, he testified that when Bata sold land to his mother, Mulamba was already adjacent to the plot but had not yet built. Mulaba knew that Bata had sold to his mother.

34. Pursuant to a court order issued on 16th April 2021, Mr. Joseph Serunjongi C/o Geo- Earth Consultant Surveyors was appointed to open boundaries of the land comprised in Kyandodo block 214 plot 2160. In his report dated 19th August 2022, he informed court that copies of title for the parcel were availed. Data was obtained from the department of surveys and mapping in Entebbe and UTM data/control was generated from GPS (RTK) that was used on ground.

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35. It was therefore the finding of Mr. Serunjongi that "the plot exists on the ground. It has an area of 0.104 hectares/0.256 acres. the plot is developed with structures. There is a portion which is developed with small shops, a residential house and it is the main area of contention because these structures belong to the Defendant Mr. Lubowa Stephen. Its total area occupied by the Defendant (trespass) is 0.0204 Ha (0.05 acres)."
36. On page 18 of his submission, the Defendant raised a point of law to the effect that failure to file a reply to a written statement of defence implies that the averments are admitted and not denied. He cited order 6 rule 9 of the Civil Procedure Rules as being instructive on that matter. I will reproduce the above rule for ease of reference.
37. Order 6 rule 9 provides for joinder of issue. Sub rule (1) provides that Subject to rule 8 of this Order, the plaintiff by his or her reply may join issue upon the defence; and each party in his or her pleading, if any, subsequent to reply, may join issue upon the previous pleading. Sub rule (2) The joinder of issue shall operate as a denial of every material allegation of fact in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.
38. My reading of the above rules does not lead me the same conclusion drawn by the Defendant. As rightly submitted by the Plaintiff, Order 8 rule 18 (4) and (5) of the Civil Procedure Rules explicitly provides that failure to file a reply to the written statement of defence does not amount to an admission.
- MS* Therefore the submission by the Defendant is baseless and rejected.

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39. On page 4 of his submissions, the Defendant contends that while the certificate of title (P. Exh 2) is 0.104 hectares equivalent to 0.256 acres, P. Exh.1, the sale agreement from which the Plaintiff claims to have bought the suit land states the size of the land as 0.12^{1/2} acres equivalent to 0.14 hectares. He therefore contends that the Plaintiff should not be allowed to attempt to prove a claim by relying on the second agreement of 24th April 1999 to justify the suit land yet the same was never pleaded in the plaint. He further contends that the same argument applies to the evidence of P. Exh. 4 and P. Exh.7, the survey reports of PW3 and Serunjogi Joseph.

40. I disagree with this argument of the Defendant. Rather I am of the considered opinion that having pleaded ownership of the suit land, the Plaintiff had the burden to prove these assertions as required under section 101 of the Evidence Act. To discharge this burden, the Plaintiff had to lead evidence to prove his claims. Therefore the survey reports, the second purchase agreement and all his witness was evidence led to prove the Plaintiff's claims. I do not agree that there is any departure from the pleading. Secondly, having been admitted on the court record, this court is obligated to weigh the evidence on the court record as a whole before reaching a decision.

41. In his submissions, the Defendant raises the issues of the difference in the size of land between the one on the title and the size in the sale agreement, and the difference between the purchase amounts in the agreements and the amount on the transfer forms. The Defendant seems to be questioning how the Plaintiff acquired the size of land indicated on P.Exh. II, the certificate of title. Section 59 of the Registration of titles Act provides that "no certificate of title issued upon
an application to bring land under this Act shall be impeached or defeasible by

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reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate, and every certificate of title issued under this Act shall be received in all courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power.”

42. A number of decided cases have considered and applied the above provisions. In the case of **John Katarikawe v. William Katwiremu & A’ nor [1977] HCB 187**, it was held, *inter alia*, that provisions of **Section 61 (now S.59) RTA** are clear that once a person is registered as proprietor of land, his title is indefeasible except for fraud. Similar position was taken in **Olinda De Souza v. Kasamali Manji [1962] EA 756** that in absence of fraud possession a certificate of title by a registered proprietor is conclusive evidence of ownership of the land and the registered proprietor has indefeasible title against the whole world. The Defendant did not plead fraud or its particulars in their statements of defence. The Defendant did not also lead any evidence to prove fraud. Therefore P.exh. II proves that the Plaintiff is the owner of the suit land.

43. Similarly, the legality of the purchase of the Defendant’s land as raised by the Plaintiff in his submissions from vendors who did not have letters of administration was not an issue in this case. The parties did not lead evidence on that matter and as such, I will not make a determination on the same.

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44. The Defendant on page 6 of his submissions also contends that the allegation by the Plaintiff that he only discovered trespass by the Defendant after boundary opening cannot legally stand because he acquired a certificate of title in 2006 while the Defendant was already in possession of his which he purchased in 2003. This line of argument by the Defendant is flawed because the issue of when the Plaintiff found out about the trespass is immaterial as it does not change the fact of whether the Defendant trespassed onto the Plaintiff's Land or not.

45. **In Odyek Alex & Anor V. Gena Yokonani & Ors**, (supra), the court held that *With the tort of trespass to land*, the courts treat the unlawful possession as a continuing trespass for which an action lays for each day that passes (see *Konskier v. Goodman Ltd* [1928] 1 KB 421), subject only to recovery of damages for the period falling within the upper limit of six years, provided for by section 3 (1) (a) of The Limitation Act, reckoning backwards from the time action is initiated, if the unlawful possession has continued for more than six years (see *Polyfibre Ltd v. Matovu Paul and others*, H.C. Civil Suit No. 412 of 2010; *Justine E.M.N Lutaaya v. Sterling Civil Engineering Company Ltd.* S. C. Civil Appeal No. 11 of 2002 and *A.K.P.M. Lutaaya v. Uganda Posts and Telecommunications Corporation*, (1994) KALR 372).

46. The court further held that in such event the Plaintiff can recover for such portion of the tort as lays within the time allotted by the statute of Limitation although the first commission of the tort occurred outside the period prescribed by the statute of limitation (see *Winfield and Jolowicz on Tort* 12th Ed. Page 649). This limitation is applicable to all suits in which the claim is for possession of land, based on possessory rights as distinct from title or ownership i.e., proprietary title.

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47. Therefore, having found that the suit land belongs to the Plaintiff, it is also my finding basing on the report of Mr. Serunjongi and the evidence above that the Defendant trespassed on the Plaintiff's land. Issue one is resolved in the affirmative.

Issue No.2: Remedies available

48. The Plaintiff sought an order of eviction of the Defendant from the suit land; a permanent injunction restraining the Defendant from entering upon or otherwise interfering with the Plaintiff's quiet possession and enjoyment of the suit land comprised in Kyadondo Block 214 plot 216; general and aggravated damages; interest on the damages from the date of filing till payment in full; costs of the suit and any other relief that the court deems fit.

49. Because I have found that the Defendant trespassed on the Plaintiff's land, an order of eviction is issued against the Defendant. The order must be executed in compliance with the Constitution (Land Evictions) (Practice) Directions, 2021.

50. The Defendant trespassed on the Plaintiff's land in 2003. Since then, the Plaintiff has been unable to use that part of his land. It is my considered opinion that for the inconvenience suffered by the Plaintiff for this time, he should be compensated in general damages. I therefore award the Plaintiff general damages of Ug.shs. 30,000,00/= (Uganda Shillings thirty million).

51. In **Fredrick J. K Zaabwe v. Orient Bank & 5 Others, civil Appeal No. 4 of 2006** the Supreme Court cited Spry J, VP in Obongo V Kisumu Council [1971] EA who, when explaining the thin difference between exemplary damages and aggravated damages, stated the nature of

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aggravated damages to be those damages where court may take into account factors such as malice or arrogance on the part of the defendant and the injury suffered by the plaintiff, for example, causing him/ her humiliation or distress; and that damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature. I have not found any aggravating factor in the facts of this case warranting the award of aggravated damages. I am of the view that the general damages will adequately compensate the Plaintiff for the loss incurred. I will therefore not award the aggravated damages.

52. The Supreme Court in **Civil Appeal No. 06 of 2012 Omunyokol Akol Johnson v. Attorney General**, “it is well settled that the award of interest is in the discretion of the Court. The determination of the rate of interest is also in the discretion of the Court. I think it is also trite law that for special damages the interest is awarded from the date of loss, and interest on general damages is to be awarded from the date of judgment.” The Defendant having trespassed on the suit property in 2003, the Plaintiff has had to spend a lot of time without using his property. For that reason, I will award interest on the interest at a court rate.

53. Section 27 of the Civil Procedure Act provides that a successful party is entitled to costs unless for good cause court orders otherwise. Costs of this suit are therefore awarded to the Plaintiff.

54. Based on the above, the Plaintiff's suit succeeds with the following orders:

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- i. An order of eviction is issued against the Defendant to be executed in compliance with the Constitution (Land Evictions) (Practice) Directions, 2021.
- ii. A permanent injunction is issued restraining the Defendant from entering upon or otherwise interfering with the Plaintiff's quiet possession and enjoyment of the suit land comprised in Kyadondo Block 214 plot 216.
- iii. General damages of Ug.shs. 30,000,000/= (Uganda Shillings thirty million) are awarded to the Plaintiff.
- iv. Interest on (iii) above is awarded at a court rate from the date of judgment till payment in full.
- v. Costs are awarded to the Plaintiff.

It is so ordered.



CORNELIA KAKOOZA SABIITI
JUDGE

23rd August 2023