

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)  
CIVIL SUIT NO.317 OF 2013**

**ANNE MUBANDA MULYANTI**

**.....PLAINTIFF**

**VERSUS**

**1. THE OFFICIAL RECEIVER/LIQUIDATOR     )  
UGANDA CONSOLIDATED PROPERTIES LTD)**

**2. FRED RWAKISETA TINAAGO                     ).....DEFENDANTS**

**BEFORE: HON. MR. JUSTICE LAWRENCE TWEYANZE**

**JUDGMENT**

**Introduction**

The Plaintiff's claim against the Defendants jointly and severally is for a declaration that the 1<sup>st</sup> Defendant breached its contractual obligations with the Plaintiff, a declaration that the Defendants are trespassing on the land comprised in LRV 3032 Folio 23, an order for vacant possession of the land comprised in LRV 3032 Folio 23 land at Makindye, mesne profits, special and general damages, interest and costs.

**The Plaintiff's Case**

The Plaintiff's case is that she entered into a Lease agreement with Uganda Consolidated Properties Ltd (in Liquidation) on 10<sup>th</sup> June 2002 in respect of land comprised in LRV 3032 Folio 23 (formerly Block 261 Plot 506) and the Lease was to run from 1<sup>st</sup> January, 1964 for 49 years. That the Lease agreement was entered into as a result of a consent judgment of Civil Suit No.43 of 1998 where the Plaintiff was declared the lawful owner of the suit property. That the said Lease expired on 31<sup>st</sup> December, 2012 and the Plaintiff through her Lawyers wrote to the 1<sup>st</sup> Defendant informing him of the expiry of the Lease and also demanded to be given vacant possession of the suit land. That the 1<sup>st</sup> Defendant remained silent but the 2<sup>nd</sup> Defendant wrote to the Plaintiff claiming that the Lease was assigned to him and that the said Lease had not yet expired. That the Plaintiff has never consented to the



assignment of the Lease to the 2<sup>nd</sup> Defendant by the 1<sup>st</sup> Defendant and that the said transfer is unlawful, null and void. That the 2<sup>nd</sup> Defendant's occupation of the suit property without her consent amounts to trespass.

### **The 2<sup>nd</sup> Defendant's Case**

The 2<sup>nd</sup> Defendant's case is that: the 1<sup>st</sup> Defendant was appointed the official Receiver/Liquidator on 31<sup>st</sup> January, 2001 of the Uganda Consolidated Properties Ltd which had been listed under PERD Statute among the Government companies to be liquidated; at that time, there was an ongoing case vide H.C.C.S No.43 of 1998 between Uganda Consolidated Properties Ltd and the Plaintiff which was later settled by consent where both parties executed a Lease agreement on 5<sup>th</sup> May 2001 to run for 49 years effective 1<sup>st</sup> January 1964 to December 2013; at the time of executing the said Lease, the Plaintiff was aware that the suit property had been offered for sale to the 2<sup>nd</sup> Defendant; the 2<sup>nd</sup> Defendant fully paid for the suit property and on 29<sup>th</sup> May 2003, the 1<sup>st</sup> Defendant executed a transfer form in favour of the 2<sup>nd</sup> Defendant; according to Clause 1 (e) of the Lease agreement dated 10<sup>th</sup> June 2002, it was expressly agreed that the Lessee would transfer its interest in the land but with prior consent of the Lessor which would not be unreasonably withheld; the 2<sup>nd</sup> Defendant consistently approached the 1<sup>st</sup> Defendant to obtain the consent from the Lessor, the Plaintiff but he failed thus denying him from transferring the property into his name; the Plaintiff unreasonably and in breach of the Lease agreement refused to give consent to transfer the suit property into the 2<sup>nd</sup> Defendant's name.

### **Representation**

At the hearing of the suit, the Plaintiff was represented by M/s Gem Advocates while the 2<sup>nd</sup> Defendant was represented by JM Musisi Advocates & Legal Consultants.

### **Consent Judgment**

During the pendency of the suit, the Plaintiff and 1<sup>st</sup> Defendant entered into a consent judgment and same was endorsed by this Honourable Court. Subsequently, the suit proceeded against the 2<sup>nd</sup> Defendant.



## Issues

The issues raised for the determination of Court at scheduling are as follows: -

- 1. Whether the 2<sup>nd</sup> Defendant is a trespasser on the suit property*
- 2. What remedies are available to the parties?*

The Plaintiff called two witness to prove the case against the 2<sup>nd</sup> Defendant. Anne Mubanda Mulyanti, PW1 and Paul Mukwana Mungati, PW2. The two witnesses were cross examined on their witness statements.

The 2<sup>nd</sup> Defendant called one witness, himself as DW1 to defend himself.

Court also called one witness a one Ntale Mustapha, CW1 working with Uganda Registration Services Bureau (URSB).

## Locus in quo

Court visited the suit property and observed among others that the Plaintiff is in possession of the same. The property is occupied by the tenants of the Plaintiff.

After the hearing, Court directed both Counsel to file their written submissions, the details which are on Court record and I have considered them in my judgment.

## Determination of issues

### **Issue1: Whether the 2<sup>nd</sup> Defendant is a trespasser on the suit property**

Trespass to land occurs when people make unauthorized entry upon the land and thereby interfere with another person's lawful possession of land. Needless to say, the tort of trespass to land is committed not against the land but against the person who is in actual or constructive possession of the land. See: the case of **Justine E.M.N. Lutaya Vs Stirling Civil Engineering Co. Ltd SCCA No.11 Of 2002**.

To prove trespass, the Court in the case of **Sheik H Mohamed Lubowa Vs Kitaka Enterprises Civil Appeal No.4 Of 1987** held that;



*"It is incumbent on the Appellant to prove that the disputed land belonged to him. That the Respondent entered upon that land and entry was unlawful in that it was made without permission or that the Respondent had no claim or interest in the land."*

It is not in dispute that in the year 2002, the Plaintiff and the Uganda Consolidated Properties Limited (in liquidation) entered into a consent judgment vide H.C.C.S. No. 43 of 1998 regarding the suit land. In that consent judgment, the Uganda Consolidated Properties Limited conceded that it had no interest in land comprised in Kyadondo Block 261 Plots 505 and 506. That the suit land belonged to the Plaintiff. The Plaintiff proved that she was the lawful owner of the suit land.

The import of the consent judgment between the parties clearly meant that before 10<sup>th</sup> June 2002, the Uganda Consolidated Properties Limited (in liquidation) had no legal or equitable interest in the land.

The 2<sup>nd</sup> Defendant in his evidence stated that he bought the suit property from the 1<sup>st</sup> Defendant on 26<sup>th</sup> February, 2001. That he purchased the interest owned by the Uganda Consolidated Properties Ltd (In liquidation). That he never looked at the Lease agreement because he purchased before the Lease Agreement was entered into.

Counsel for the 2<sup>nd</sup> Defendant submitted that the 2<sup>nd</sup> Defendant acquired from the 1<sup>st</sup> Defendant the interest it had in the land. That its rights and obligations in the land were transferred to the 2<sup>nd</sup> Defendant.

I respectfully disagree with the submission of Counsel for the 2<sup>nd</sup> Defendant that the 2<sup>nd</sup> Defendant acquired from the 1<sup>st</sup> Defendant the interest it had in the land because before 10<sup>th</sup> June 2002, the Uganda Consolidated Properties Ltd (in Liquidation) had no legal or equitable interest in the suit land.

The question to be asked is whether the Uganda consolidated Properties Limited (in liquidation) had power or authority to sell the suit land to the 2<sup>nd</sup> Defendant as alleged on 26<sup>th</sup> February 2001? To me the answer is no. This is because it had no legal or equitable interest in the suit land as per the consent judgment in H.C.C.S

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No.43 of 1998. Therefore, the 2<sup>nd</sup> Defendant who purported to purchase the property from the 1<sup>st</sup> Defendant who had no interest, acquired no interest in the suit land. One cannot sell what does not belong to him or her.

It should be noted that in order for the Uganda Consolidated Properties Limited (in liquidation) to regularize its stay on the Plaintiff's land, it entered into a Lease agreement with the Plaintiff for a term of 49 years starting 1<sup>st</sup> January, 1964 to December, 2013. However, after careful study of the Lease agreement, the term (duration) of the Lease is strictly 49 years only. Much as in the Lease agreement, it is expressly stated that it would expire in December, 2013, this contradicts with the express provision regarding the term of the Lease which is 49 years only. So if we take the expiry date of the Lease as 1<sup>st</sup> December, 2013, it means that the term of the Lease would be 49 years and 11 months, which to me was not the intention of the parties.

It was the 2<sup>nd</sup> Defendant's evidence that on 11<sup>th</sup> January 2013, he was copied with a letter of the Plaintiff asking him to vacate the suit property because of the expiry of the Lease. This implies that the Lease was not to expire in December, 2013 as stated in the Lease agreement.

This explains why the Plaintiff upon its expiry on 1<sup>st</sup> January, 2013, the Plaintiff served the letter dated 11<sup>th</sup> January, 2013 onto the 1<sup>st</sup> and 2<sup>nd</sup> Defendants requiring them to vacate the suit property. This was confirmed by the 2<sup>nd</sup> Defendant in his evidence. Since there is no evidence on record from URSB protesting the said notice to give vacant possession, I find that the Lease in this case expired on 1<sup>st</sup> January, 2013. This is further buttressed by the consent judgment between the Plaintiff and 1<sup>st</sup> Defendant in H.C.C.S No.317 of 2013 wherein the 1<sup>st</sup> Defendant admitted that it had no interest in the suit property and agreed to give the Plaintiff vacant possession of the suit property. Therefore, for purposes of determining this suit, Court is inclined to take 1<sup>st</sup> January, 2013 as the expiry date.

Further, even after securing a Lease of 49 years effective 1<sup>st</sup> January 1964, there is no evidence on record to show that the 1<sup>st</sup> Defendant as a lessee sought the consent of the Lessor to sell the suit property to the 2<sup>nd</sup> Defendant. According to **Clause 1(e) of PEX1**, the 1<sup>st</sup> Defendant was not to assign, underlet, sell or part with or share the possession of the demised premises or any part thereof without the written consent

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of the Lessor and that such consent was not to be unreasonably withheld. Since no consent was sought from the Plaintiff, I still hold that even after getting the Lease on the suit property, the 1<sup>st</sup> Defendant did not transfer valid title to the 2<sup>nd</sup> Defendant. If it did, the same was null and void for being in contravention of express provision of Clause 1(e) of the Lease Agreement.

Having held that the Lease between the parties expired on 1<sup>st</sup> January, 2013, this meant that the land automatically reverted to the Lessor, the Plaintiff. In the case of **Daphine Negesa Musoke Vs Samu Investments Ltd C.A.C.A No.85 of 2003** referring to the case of **Dr. Adeodanta Kekitiinwa & 3 Ors Vs Edward Mando Wakida C.A.C.A No.03 of 1997**, *it was held that once a Lease for a definite term expires, the lessee or tenant ceases to have any legal right on the property and is merely a trespasser. The possession automatically reverts back to the Lessor.*

In this case, there is no evidence on record to show that the 1<sup>st</sup> Defendant applied for renewal of the Lease as per Clause 4 of the Lease Agreement. Upon the expiry of the Lease on 1<sup>st</sup> January, 2013, the possession of the suit land reverted back to the Plaintiff. Therefore, the occupation of the suit land by the 2<sup>nd</sup> Defendant from January, 2013 to March 2020 on the basis of an expired Lease amounted to trespass. Issue one is answered in the affirmative.

**Issue 2: Whether the Plaintiff is entitled to the reliefs sought in the plaint.**

The Plaintiff prayed for a declaration that the 2<sup>nd</sup> Defendant is a trespasser on the suit land, an order that the 2<sup>nd</sup> Defendant pays mesne profits of USD 1,000 (One Thousand United States Dollars) per month from 1<sup>st</sup> January 2013 till payment in full, general damages, interest of 25% on mesne profits & general damages and costs of the suit.

The Plaintiff prayed for a declaration that the 2<sup>nd</sup> Defendant is a trespasser on the suit land. Having held that the 2<sup>nd</sup> Defendant was a trespasser on the suit land from January 2013 to March 2020 when he gave vacant possession of the suit land, a declaration is hereby granted to the Plaintiff.

The Plaintiff also prayed for an order of mesne profits.

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Mesne profits are defined in **Section 2(m) of the Civil Procedure Act (CPA) Cap 71** as *those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it together with interest on those profits but shall not include profits due to improvements made by the person in wrongful possession.*

The 2<sup>nd</sup> Defendant in his evidence admitted that he occupied the suit property from January 2013 when the Lease expired to March 2020. He also confirmed that he neither had authorization for his stay nor did he pay any rent during this period.

I have carefully studied the evidence on record and it is not in dispute that after the expiry of the Lease, the Plaintiff was kept out of use of her property and was unable to derive a benefit from it since it was in wrongful possession of the 2<sup>nd</sup> Defendant. As such, the Plaintiff is entitled to mesne profits.

In the case of **Annet Zimbiha Vs Attorney General H.C.C.S No.109 of 2011** court cited with approval the case of **Clifton Securities Ltd Vs Huntley & Ors [1948] 2 ALLER 283 at 284** where Lord Denning J raised and answered the question:

*"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 rent, but if the real value is higher than the rent, then the mesne profits must be assessed at the higher value"*

In the instant case, based on the Evaluation Report PEX6 and the evidence of PW2, he assessed mesne profits at UGX.300,000,000/= (Uganda Shillings Three Hundred Million). I therefore award the Plaintiff mesne profits of UGX.300,000,000/= (Uganda Shillings Three Hundred Million).

The Plaintiff prayed for general damages.

On this issue it is not in dispute that the 2<sup>nd</sup> Defendant has been in wrongful possession of the suit property for 7 years (January 2013 to March 2020) without paying rent for it. As such, I find that the Plaintiff is entitled to an award of general damages.



In the case of **Kibimba Rice Ltd Vs Umar Salim SCCA No.17 of 1992**, it was held that a plaintiff who suffers damage due to the wrongful act of the Defendant must be put in the same position he or she would have been in had she or he not suffered the wrong.

Counsel for the Plaintiff proposed the sum of UGX.100,000,000/= as general damages.

Counsel for the 2<sup>nd</sup> Defendant submitted that the Plaintiff is not entitled to general damages because the 2<sup>nd</sup> Defendant occupied the suit property as the Lawful occupant.

I have already held hereinabove that the 2<sup>nd</sup> Defendant was a trespasser on the suit property and as such the Plaintiff is entitled to an award of general damages. I award the Plaintiff UGX.50M (Uganda Shillings Fifty Million) as general damages.

The Plaintiff prayed for interest on mesne profits and general damages.

The guiding principle in award of interest is that interest is awarded at the discretion of court.

Counsel for the Plaintiff proposed interest rate of 25% on both mesne profits and general damages.

With regard to Mesne profits, I award interest of 25% from the date of filing the suit till payment in full.

With regard to interest on general damages, I award the interest of 6% from the date of judgment until payment in full.

The Plaintiff prayed for an order costs of the suit. Cost follow event, the Plaintiff is granted costs of the suit.

All in all, I find that the Plaintiff is entitled to the orders sought against the 2<sup>nd</sup> Defendant.

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I therefore enter judgment for the Plaintiff against the 2<sup>nd</sup> Defendant with the following orders: -

1. A declaration is hereby granted that the 2<sup>nd</sup> Defendant was a trespasser on the suit land from January 2013 to March 2020.
2. The Plaintiff is awarded **UGX.300,000,000/= (Uganda Shillings Three Hundred Million)** as mesne profits with the interest of 25% from the date of filing till payment in full.
3. The Plaintiff is awarded **UGX.50,000,000/= (Uganda Shillings Fifty Million)** as general damages with interest of 6% from the date of judgment till payment in full.
4. Costs of the suit are awarded to the Plaintiff. I so order.

Dated at Kampala this 16<sup>th</sup> day of January, 2023.

  
.....  
**LAWRENCE TWEYANZE**  
JUDGE  
16/01/2023