

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA; AT KAMPALA
(LAND DIVISION)
CIVIL SUIT No. 130 OF 2011

1. MOSES AMAN
2. PERRY AMAN **PLAINTIFFS**
3. MONA AMAN
4. PAMELA AMAN

VERSUS

ZEPHER BESIMBIRE **DEFENDANT**

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

JUDGMENT

The Plaintiffs had initially filed this suit in the Nakawa Chief Magistrate's Court under Civil Suit No. 299 of 2009 of that Court. In it, they seek Court orders for the ejection of the Defendant from mailo land comprised in Kyadondo Block 243 Plot 2506, at Luzira (herein after referred to as the suit land), a permanent injunction restraining the Defendant from trespassing on the suit land, award of general damages for trespass, and costs. However, the Court realised from an annexure to the Plaintiffs' reply to the Written Statement of Defence that the Plaintiffs had allegedly bought the suit property at U. shs. 130,000,000/= (One hundred and thirty million only). Furthermore, it is registered property, over which there is a competing proprietary claim; hence, at the conclusion of the trial, it would entail issuing an order for the cancellation of one of the titles.

Owing to this, the Chief Magistrate, and with the acquiescence of the parties to the suit, forwarded the suit to the High Court as the Court seized with the jurisdiction over it. At the High Court, the parties adopted the facts they had agreed upon in their joint scheduling memorandum in the Chief Magistrate's Court; which are, that: –

(a) The Plaintiffs are the registered proprietors of land comprised in and known as Kyadondo Block 243 Plot 2506 situate at Luzira, Kampala.

(b) Land comprised in Kyadondo Block 243 Plot 2321 does not exist anymore; as it was sub divided into Plots 2506 and 2507 prior to the sale of Plot 2506 to the Plaintiffs.

The parties agreed on, and proposed issues for Court's determination. I have adopted these proposed issues; but have reframed them, as is the mandate of this Court to do under the provisions of 0.14, r.5, of the Civil Procedure Rules, as follows: –

1. Who is the lawful owner of the land comprised in and known as Kyadondo Block 243 Plot 2506?
2. Whether the Plaintiffs are bona fide purchasers of the suit property for value; without notice.
3. What remedies are available to the parties?

The documents the parties agreed on are as follows: –

PLAINTIFFS' DOCUMENTS

- (i) Photocopy of the title to land comprised in Kyadondo Block 243 Plot 2506 (marked exhibit P1).
- (ii) Photocopy of the area schedule of the land formerly known as Plot No. 2131; now sub divided into two plots: Plot No. 2506 and Plot No. 2507 (marked exhibit P2).
- (iii) Search Form endorsed by the Commissioner Land Registration (KYA 243/2506), dated 8th January 2009, showing that the Plaintiffs are the rightful owners of the suit property (marked exhibit P3).
- (iv) Agreement of sale of land comprised in Kyadondo Block 243 Plot 2506, at Luzira, between Sebuliba Fred and Mr & Mrs Aman (marked exhibit P4).
- (v) Letter (Ref: KYD 243/2506) from Commissioner Land Registration to Kayongo Moses, dated 2nd November 2009, (marked exhibit P5), clarifying on sub division of land comprised in Kyadondo Block 243 Plot 2321 into Plot 2506 and Plot 2507.
- (vi) Photocopy of the advert on page 5 of the New Vision Newspaper of Wednesday 24th December 2008, for sale of land measuring 35 decimals on Mutungo Hill Town and Lake View (marked exhibit P6).

DEFENDANT'S DOCUMENTS

(i) Application for a caveat – marked annexture 'C' to the Written Statement of Defence – (marked exhibit D1).

(ii) Mpairwe's letter to the Commissioner Land Registration, Ref. MP/LAND/09/01, dated 30th September 2009 (marked exhibit D2).

In addition to the Defendant's documents exhibited above, the Defendant tendered in Court certain documents for purposes of identification only; with the view of proving them at the trial. These, the Court marked as follows: –

(a) Certificate of title for land comprised in Block 243 Plot 2321, at Luzira; marked ID₁.

(b) Statutory declaration dated 11th June 2009 in respect of Block 243 Plot 2321 at Luzira, (annexture B₁ to the Written Statement of Defence); marked ID₂.

(c) Application for a special certificate of title dated 4th September 2008 in respect of Block 243 Plot 2321 at Luzira, (annexture B₂ to the Written Statement of Defence); marked ID₃.

(d) An unreferenced letter by the General Secretary Luzira Local Council Zone 7 dated 8th September 2008, addressed to the Principal Registrar Mailo Land Office, (annexture B₃ to the Written Statement of Defence); marked ID₄.

(e) Voter Personal Identification Card No. 14034568, bearing the name of Besimbire Zepher, but with a strange photograph, (annexture B₄ to the Written Statement of Defence); marked ID₅.

The parties then, on the advice of Court, filed sworn witness statements on record; and the hearing of the case proceeded there from. However, after the hearing had closed, and the Plaintiffs had filed written submissions, the Defendant applied, vide Misc. Application No. 221 of 2015, urging Court to reopen the case and enable him tender in evidence his owner's certificate of title to the land comprised in Block 243 Plot 2321 at Luzira; a copy of which had been tendered in for identification at the scheduling stage and marked ID₁. The Court had at the hearing of the case, directed that the Defendant should produce this title for inspection; but he failed to do so, without giving any explanation.

I should point out that there is no contention that the suit land resulted from sub division of the land comprised in Block 243 Plot 2321 at Luzira; which the Defendant claims to be in possession

of the owner's certificate of title for. Evidence in proof of this position is in the photocopy of the area schedule of the land formerly known as Plot No. 2131 (agreed upon by the parties and marked *exhibit P2*), which shows sub division of the land into Plot No. 2506 and Plot No. 2507. Additional evidence in proof of the said position is in the letter (Ref: KYD 243/2506) from Commissioner Land Registration to Kayongo Moses, dated 2nd November 2009, (also agreed upon by the parties and marked *exhibit P5*), clarifying on sub division of land comprised in Kyadondo Block 243 Plot 2321 into Plot 2506 and Plot 2507.

Accordingly then, neither does this case turn on the issue of the registered proprietor of the land comprised in Block 243 Plot 2321 at Luzira, nor such person being in possession of the certificate of title for it. In the joint case scheduling memorandum, the parties agreed that the land comprised in *'Kyadondo Block 243 Plot 2321 does not exist anymore so far as it was subdivided into Plots 2506 and 2507 prior to the sale to the Plaintiff of the former plot'*. This means, title to land comprised in Kyadondo Block 243 Plot 2321 is different from title to land comprised in Kyadondo Block 243 Plot 2506, as the two are different pieces of land. Instead, the matter in issue before me is whether, or not, the Plaintiffs are bona fide purchasers of the suit property, which the Defendant himself concedes was sub divided from the Defendant's land comprised in Block 243 Plot 2321 at Luzira, by some unknown person.

In the event, it is apparent that to reopen the hearing of the case, for the purpose of allowing the Defendant to tender in evidence his certificate of title to the land comprised in Block 243 Plot 2321, which the parties hereto agree no longer exists, would not serve any purpose; as it would add no value to the Defendant's. It would instead be an exercise in futility; and a redundant effort. I therefore find no merit in the application; which I dismiss with costs to the Plaintiffs. Turning to the main suit, I consider it prudent to jointly handle the 1st and 2nd issues agreed upon by the parties herein for Court's determination. I am persuaded to do so, owing to the interlinkage of the two issues; wherefore, the determination of the one would have a direct bearing on, and would conclusively resolve the other.

**Issue No. 1. Who is the lawful owner of the land comprised in and
known as Kyadondo Block 243 Plot 2506?**

AND

**Issue No. 2. Whether the Plaintiffs are bona fide purchasers of the
suit property for value, without notice; or whether the
Plaintiffs are guilty of fraud.**

As has been pointed out herein above, the parties are on common ground that the land hitherto comprised in Kyadondo Block 243 Plot 2321 does not exist anymore. It was, as is shown by the area schedule tendered in evidence and marked *exhibit P2*, subdivided into Plot 2506 (the suit property), and Plot 2507. The letter from Commissioner Land Registration to Kayongo Moses, dated 2nd November 2009, (marked *exhibit P5*), clarifies that land comprised in Kyadondo Block 243 Plot 2321 was subdivided into Plot 2506 and Plot 2507. Furthermore, it is not in dispute that the Plaintiffs are the registered proprietors of the suit property; as is evidenced by the certificate of title marked *exhibit P1*. Owing to this, recourse must be had to the relevant provision of the Registration of Titles Act (Cap. 230, Laws of Uganda 2000 Edn.).

Section 59 of the Registration of Titles Act enjoins Courts to receive every certificate of title issued under the Act as evidence of the particulars set forth in the certificate; and provides further that the certificate of title shall be conclusive proof that the person named therein is the proprietor. Further to this, provisions of section 176 of the Registration of Titles Act, which protect a registered proprietor of land, forbid any action for ejectment of, or recovery of such land from, or adverse claim against, the registered proprietor of land. The exception to this protective provision is where the purchaser procured the land through fraud, or acquired it otherwise than as a bona fide purchaser for value. On the legal force of the certificate of title, the said section 59 concludes that: –

"... .. in any case other than as aforesaid, the production of the registered certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in that document as the grantee, owner, proprietor or lessee of the land described in it; any rule of law or equity to the contrary notwithstanding."

Since in the instant suit, it is not in dispute that the Plaintiffs are the registered proprietors of the suit property, it follows that the law recognizes them as the lawful owners thereof; and this resolves the first issue in their favour. This status of the land with regard to proprietorship remains so, unless there is evidence before this Court that impeaches it on the ground that the land was acquired in contravention of the express and clear safeguards in the provisions of the Registration of Titles Act cited above. Since the Defendant impugns the manner the suit land was

registered in the names of the Plaintiffs, contending that their acquisition emanated from fraudulent subdivision of the land comprised in Kyadondo Block 243 Plot 2321, it is the bounden duty of this Court to inquire into the allegation.

There is a huge corpus of authorities, which inform this Court, on how to handle allegations of fraud. In *J.L. Okello–Okello vs Uganda National Examinations Board, SCCA No. 12 of 1987*, Lubogo Ag. JSC, and Odoki JSC (as he then was), reiterated the position of the law that a certificate of title to land is conclusive evidence of title; and that it can only be impeached on limited grounds including fraud as provided for in the Registration of Titles Act. The learned Justices also placed the burden on the person seeking to impeach the title, to adduce evidence to substantiate the allegations of fraud. In *Kampala Bottlers Ltd. vs Damanico (U) Ltd., SCCA No. 22 of 1992, [1994–95] HCB 49*, Wambuzi C.J. cited with approval the decision in *Robert Lusweswe vs Kasule & Anor, HCCS No. 1010 of 1983*, where Odoki J. (as he then was) stated, on the provision that the certificate of title is conclusive proof of ownership, as follows: –

"Therefore while the cardinal rule of registration of titles under the Act is that is that the Register is everything, the Court can go behind the fact of registration in cases of actual fraud on the part of the transferee."

In *Hariprasad Ramabai Patel vs Babubhai Kalidas Patel, HCCS No. 981 of 1990, [1992–93] HCB 137*, Karokora J (as he then was) stated as follows: –

*"A certificate of title is conclusive evidence of ownership of the suit property. No submission or oral evidence can be called to vary the certificate of title unless fraud, lack of consideration or illegality is proved." (***emphasis added***).*

In *Ismail Jaffer Allibhai & 2 Ors vs. Nandlal Harjivan Karia & Anor; S.C. Civ. Appeal No. 53 of 1995. [1996] IV KALR 1*, Oder J.S.C. relied on the case of *David Sejakka Nalima vs Rebecca Musoke; C.A Civ. Appeal No. 12 of 1985* (unreported), which had cited the case of *Assets Company Ltd. vs Mere Roihi & Others [1905] A.C. 176*. In that case, at p. 210, the Privy Council was considering statutory provisions with similarity to the provisions contained in our Registration of Titles Act. It defined fraud as “*dishonesty of some sort.*” It also advised that for fraud to succeed as a cause of action, it must be attributable either to the registered purchaser or to its agents. The Court explained further on what action of the purchaser would amount to or point to fraud, as follows: –

“The mere fact that he might have found out if he had been more vigilant, and had made further inquiries which he omitted to make does not of itself prove fraud on his part. But if it is shown that his suspicions were aroused and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him.” (emphasis added).

In *Kampala Bottlers Ltd. vs Damanico (U) Ltd.*, (supra), Wambuzi C.J. restated the position of the law on what amounts to a bona fide purchase of registered land. He also restated therein the position in law that the standard of proof required in cases of fraud is higher than the one required to prove ordinary civil claims; and further, for an allegation of fraud to succeed, he stated as follows: –

“... .. fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act.”

It was therefore the duty of the Defendant to plead, and strictly prove that the Plaintiffs were guilty of fraud in their acquisition of the suit property. However in his pleading, he never attributed the fraud he complains of, to the Plaintiffs. Furthermore, nowhere in his testimony does he even merely allege that the Plaintiffs, or the persons who transacted the purchase of the suit land on their behalf, were in any way involved in any act of fraud. His evidence is that the fraud committed against him, which led to the alienation of his land comprised in Kyadondo Block 243 Plot 2321, then its subdivision, began with the application for the special certificate of title to that land by some unknown impostor. He contends that he has all the time been in possession of his copy of the certificate of title to that land.

Yet against this, evidence was adduced in support of the Plaintiff's case that neither they, nor their parents who transacted the purchase of the suit land on their behalf, committed any act of fraud in the acquisition of the suit land, or had any knowledge of fraud in the course of the purchase. To prove this, Mary Aman (PW1) testified that she learnt of the sale of the suit land, from an advert in the New Vision Newspaper of 24th December 2008 (*exhibit P6*). She and her husband met the vendor in the Kitintale offices of the L.C. officials of the area, in the presence of the late Mr. Nsubuga (the Chairperson LC1), and Mr. Sematimba (the Secretary either of

Defence or Information). They verified from the vendor's passport, at the meeting, that he was truly the registered owner of the suit land.

She and her husband, together with an LC official and Fred Ssebuliba (the vendor), inspected the suit land which the LC official confirmed belonged to the said Fred Ssebuliba; and they established that there was no physical encumbrance on the land. Her further evidence is that she then carried out a search at the Land Registry of Titles; and the search established that Fred Ssebuliba was indeed the registered proprietor thereof, and there was no encumbrance on the register. Fred Ssebuliba then gave her a receipt of payment he had made to the area Local Council as a contribution to the security fund of the area for the months of November and December 2008 (*exhibit P7*). She then commissioned a surveyor who verified that the location and size of the suit land matched the entries in the certification of title thereto.

This multiple exercise of due diligence took her up to ten days to accomplish; after which, she was satisfied, and had no reason to doubt the authenticity of the vendor and his title to the suit land. She then executed the purchase agreement between Ssebuliba Fred as vendor, and herself together with her husband (Mr. Aman) as purchasers (*exhibit P4*). Robert Bonny Ebong (PW2) testified that he surveyed the suit land on the instructions of Mary Aman (PW1); and that in the survey exercise he located the mark stones on the land, which tallied with the information on the title to the suit land and as well the Cadastral Map of the area. He stated that at the time he carried out the survey of the land he was instructed to do, the Cadastral Map only showed the existence of the suit land on that land.

His further evidence is that the survey exercise was witnessed by the LC1 Chairperson and Secretary of Defence of the area, as well as Mr. Aman (husband to PW1), and a neighbour of the suit land whose name he did not know. He further testified that someone who Mr. Aman introduced to him as Mr. Ssebuliba, also attended part of the survey. In *Amrattal Purshottan & Anor vs Gian Singh Bhambra – H.C.C.S. No. 289 of 2010*, Court held that a bona fide purchaser is a person who acquires property without actual or constructive notice of any defects in title. The person must have, in good faith, paid valuable consideration for the property without prior notice of any adverse claim. In this regard, one who has exercised due diligence, as well as reasonable caution, before entering into a transaction would be a bona fide purchaser.

In the instant case before me, while PW1's evidence shows her exercise of due diligence prior to the purchase of the suit land, even though she had no notice or suspicion of some fraudulent

dealings having been committed with the land, the Defendant did not adduce any evidence to controvert her evidence in this regard. He has instead centred his evidence on the contention that he has, in his possession, the owner's certificate of title to land comprised in Kyadondo Block 243 Plot 2321. However, as is manifest from the letter by the Commissioner of Land Registration to one Kayongo Moses on 2nd November 2009 (*exhibit P5*), it is apparent that the Defendant's land comprised in Kyadondo Block 243 Plot 2321 was transferred to one Moses Kayongo, who proceeded to subdivide it into Plots 2506 (the suit land) and 2507.

Thereafter, he (Kayongo Moses) transferred Plot 2506 to one Ssebuliba Fred, who in turn transferred it to Moses Aman, Perry Aman, Mona Aman, and Pamela Aman. Indeed the certificate of title to the suit land (*exhibit P1*) corroborates the explanation by the Commissioner of Land in her letter (*exhibit P5*) on the history of the various transfers effected on the suit land, from the time the suit plot of land was created as a subdivision of Kyadondo Block 243 Plot 2321. It is therefore unmistakably clear from the evidence shown above, that there is no nexus whatever between the Plaintiffs herein and whoever might have committed the fraud on the Defendant's land comprised in Kyadondo Block 243 Plot 2321. The Defendant has failed to connect the Plaintiffs or their agents with the act of fraud he complains of.

In *Uganda Broadcasting Corporation vs Sinba (K) Limited & 3 Ors, Civ. Applica. No. 12 of 2014*, by Kakuru J.A. cited with approval the decision by Masika C.J. in *Edward Musisi vs Grindlays Bank (U) Ltd & 2 Ors, 1983 H.C.B. 39*, where the learned C.J. stated the position as to when a person may be determined not to be a bona fide purchaser for value, as follows: –

"The 3rd Defendant could only be covered if it could be shown that it was either a party to the fraud or was sufficiently aware of it, so as not to qualify as a bona fide purchaser for value. A person who becomes a registered person through a fraudulent act by himself or to which he is a party or with full knowledge of the fraud so as not to be a bona fide purchaser for value is 'the person registered as a proprietor of such land through fraud' within the meaning of s.184 of the Registration of Titles Act (Cap. 205)."

Even if there was evidence that Moses Kayongo had fraudulently registered himself as proprietor of the Defendant's land comprised in Kyadondo Block 243 Plot 2321, then unless Ssebuliba Fred either participated in the fraud, or had no knowledge of it, the transfer of the subdivision of the Defendant's land to Ssebuliba Fred, passed good title to Ssebuliba Fred; notwithstanding the fraud in Moses Kayongo's acquisition of the Defendant's land. This paradox in the law governing

registered land was clearly made in *Andrea Lwanga vs The Registrar of Titles, Misc. Cause No. 7A of 1977 [1980] H.C.B. 24*, where Odoki J. (as he then was) held at p. 25, as follows: –

"According to section 189 of the R.T.A. the title of a bona fide purchaser for value could not be impeached since a person who was registered through fraud could pass a good title to a bona fide purchaser for value unless the purchaser was not a bona fide purchaser or was privy or party to the fraud. This was one of the paradoxes of registered conveyancing; that the registration obtained by fraud was void and yet capable of becoming a good root of title to a bona fide purchaser for value – Gibbs vs Messer [1891] A.C. 248."

The law invalidates conveyance of fraudulently acquired registered land when it still reposes in the fraudster; but, paradoxically, enables the fraudster to pass a valid title to a bona fide purchaser for value who has no notice of the fraud. Accordingly then, in the instant case, in the absence of evidence that Ssebuliba Fred was not a bona fide purchaser for value, Moses Kayongo passed good title to the suit property to him. Similarly, even if Ssebuliba Fred was not a bona fide purchaser of the suit land from Moses Kayongo, nevertheless, he (Ssebuliba Fred) passed good title to the suit property to the Plaintiffs, as bona fide purchasers for value without notice of any fraud since their agents who acted on their behalf had no notice of any fraud. Accordingly, the Plaintiffs' title to the suit land is unimpeachable.

3. What remedies are available to the parties?

The Defendant admits in his evidence that he took possession of the suit property; and has constructed a house thereon. He had carried out a search at the Land Registry, as is evidenced by his lawyer's letter to the Commissioner Land Registration (*exhibit D₂*), and established that his title to the land comprised in Kyadondo Block 243 Plot 2321, and from which the suit property was divided, had ceased to exist. In the circumstances, what he needed to do, in addition to the caveat he lodged on the suit lands (*exhibit D₁*), was to contest the Plaintiffs' title in a Court of law; other than taking the law into his hands, as he has done. As the registered proprietors of the suit property, the Plaintiffs have all along, in law had legal possession thereof. Accordingly, the Defendant's taking physical possession was, and is, an act of trespass.

On what amounts to trespass, in his judgment in *Justine E.M.N. Lutaaya vs Stirling Civil Engineering Company Ltd., SCCA No. 11 of 2002*, which is erroneously attributed to Kato J.S.C. in the report *[2009]1 E.A. 274*, Mulenga J.S.C. made a succinct explanation and clarification on the law of trespass, as follows: –

"Trespass to land occurs when a person makes an unauthorised entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that 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. At common law, the cardinal rule is that only a person in possession of the land has capacity to sue in trespass. Thus, the owner of an unencumbered land has such capacity to sue, but a landowner who grants a lease of his land, does not have the capacity to sue, because he parts with possession of the land. During the subsistence of the lease, it is the lessee in possession who has the capacity to sue in respect of that damage."

The learned Justice also pointed out that possession is not restricted to physical or wholesome occupation, as the slightest amount of possession suffices. For this, he cited with approval the decision of Sir William Duffus P. in *Moya Drift Farm Ltd vs Theuri* [1973] E.A. 114, where, at p.117, the learned President of the Court reproduced a passage from the decision of the Privy Council in the Ghanaian case of *Wuta–Ofei vs Danquah* [1961] 3 All E.R. 596, where at p. 600, the Court stated as follows: –

"Their Lordships do not consider that, in order to establish possession, it is necessary for the claimant to take some active step in relation to the land such as enclosing the land or cultivating it. The type of conduct, which indicates possession must vary with the type of land. In the case of vacant and unenclosed land, which is not being cultivated, there is little which can be done on the land to indicate possession. Moreover, the possession, which the Respondent seeks to maintain, is against the Appellant who never had any title to the land. In these circumstances, the slightest amount of possession would be sufficient."

Mulenga J.S.C. relied on two leading authorities in East Africa, which propounded the position in law that a person holding a certificate of title to land has legal possession of that land. First, was the *Moya Drift Farm Ltd* case (supra); from which he reproduced a passage contained in the judgment of Spry V.P., at p.116, that the law of England was inconsistent with the provision of the Kenyan Registration of Titles Act on possession of land; hence, it was not applicable, and further stated as follows: –

"I cannot see how a person could possibly be described as 'the absolute and indefeasible owner' of land if he could not cause a trespasser on it to be evicted. The Act gives a registered proprietor his title on registration and, unless there is any other person lawfully

in possession such as a tenant, I think that title carries with it legal possession; there is nothing in the Act to say or even suggest that this title is imperfect until he has taken physical possession."

Furthermore, Mulenga J.S.C. reproduced a passage from the judgment of Duffus P. in the ***Moya Drift Farm Ltd*** case (supra); where, at p. 117 thereof, the learned President of the Court stated as follows: –

"... the fact that the appellant was the registered proprietor as owner in fee simple under the registration of Titles Act, and as such vested with the absolute and indefeasible ownership of the land, was sufficient to vest the legal possession of the land in the appellant, and that this possession would be sufficient to support the action for trespass against a trespasser wrongly on the land."

Second, Mulenga J.S.C. relied on the case of ***United Cultivate Company Ltd vs Uganda Properties Ltd, CACA No. 1 of 1983***, wherein Nyamuchoncho J.A., relying on the ***Moya Drift Farm Ltd*** case (supra), noted that the provision in the Kenyan Registration of Titles Act, was similar to that contained in the Ugandan Registration of Titles Act; so he stated as follows: –

"I think the decision in Moya's case represents what the law should be in Uganda. It is an authority. I therefore, hold that a person holding a certificate of title has, by virtue of that title, legal possession, and can sue in trespass."

In the instant case before me, the Plaintiffs are the registered proprietors of the suit land. They tended the suit land by clearing of the overgrown vegetation therein, from which the Defendant chased their workers away. Accordingly, they had both legal and physical possession of the suit land by the time the Defendant took possession of it. In taking possession of the suit land without the authority of the Plaintiffs, thereby depriving the Plaintiffs of physical possession, albeit that this did not affect the Plaintiffs' legal title thereto, the Defendant certainly committed trespass onto the suit land; as he had no right to do so. In the event, the Plaintiffs who have been denied the use and enjoyment of the suit property by the Defendant's unlawful possession thereof, are entitled to the award of general damages.

The Plaintiffs have urged Court to award them general damages in the sum of U shs. 200,000,000/= (Two hundred million only) for the seven years to date the Defendant has been in

unlawful possession by occupation of the suit land. They have however not pleaded for the demolition of the residential property the Defendant has put up on the suit property. It would seem the Plaintiffs might be comfortable with taking over, and enjoying the use of, the house. On the other hand, the Plaintiffs may find the house the Defendant built on the suit land, not to their taste; and so, the building of the house on the suit land would have adversely affected the value of the land. Be it as it may, on the principle that whatever is fixed to the land becomes part of the land, the Plaintiffs are entitled to the suit property with whatever development the Defendant has, through his folly, put on it.

In the premises, I find that the Plaintiffs are entitled to an award of general damages for trespass, for the period of the Defendant's trespass and wrongful occupation of the suit land. However, I think the sum of U shs. 200,000,000/= (Two hundred million only), which the Plaintiffs have sought as general damages, is pretty much on the higher side of the scale of award of general damages. I consider the sum of U. shs. 20,000,000/= (Twenty million only), alongside the inevitable order of eviction of the Defendant from the suit property, and the Plaintiffs' taking possession thereof with the enjoyment of the house built thereon, as a reasonable and sufficient remedy; and I so order. In the event, I allow this suit; and make the following orders: –

- (i) The Defendant, his agents and servants, shall forthwith be evicted from the suit property (to wit, land comprised in Kyadondo Block 243 Plot 2506, at Luzira); which the Plaintiffs shall, immediately, take vacant possession of.
- (ii) A perpetual injunction hereby issues; restraining the Defendant or any person acting on his behalf, from committing any further trespass or unlawful re-entry onto the suit land.
- (iii) The Defendant shall pay the Plaintiffs general damages for trespass on the suit land, in the sum of U. shs. 20,000,000/= (Twenty million only).
- (iv) The Plaintiffs are awarded costs of the suit.
- (v) The awards ordered in (iii) and (iv) herein, shall attract interests at the rate of 10% per annum from the date of this judgment.



Alfonse Chigamoy Owiny – Dollo
JUDGE

18 – 12 – 2015