

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 112 OF 2000**

SHABAN NKUTU MUZIRANSA ::::::::::::::::::::::::::::::: PLAINTIFF

**VERSUS**

MUHANGI CHARLES ::::::::::::::::::::::::::::::: DEFENDANT

**BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI**

**JUDGMENT:**

The plaintiff brought this action against the defendant for a declaration that he is the owner of suit property at Plot 23(a) Luwum Street Kampala. He also seeks an order of injunction to restrain the defendant from laying a claim to the management of the property. The plaintiff also wants special and general damages for loss of rent mesne profits and the inconvenience he has suffered and also costs of the suit.

According to the plaint the plaintiff acquired the suit property in May 1999 from one Muhamed Mubiru. The property was subsequently transferred into his manes whereupon the plaintiff sought to collect rents. He states that on attempting to do this he was rebuffed by the plaintiff who asserted that the property was his and the tenants would pay to him. As a result the plaintiff claims the declaration and rent for four flats and shops from June

1999 to 1/1/2003 as well as up to the date of full possession by him from the defendant. The rents are calculated at increasing rates for three year span.

In his written statement of defence filed in court on 8/5/2000 the defendant denied any liability for conversion and contended that the plaintiffs acquisition of title to the property was undermined by fraud. He prayed for the suit to be dismissed with costs. At the trial which proceeded in defendants absence, the plaintiff called two witnesses including himself. A written submission was filed on his behalf.

Before considering the evidence it is pertinent to look at the defendants pleadings which are defective. Firstly the WSD as filed is a mere denial of the plaintiff's claim. In it the defendant has not, while denying conversion, laid out any title in the property to defeat that of the plaintiff. In short no counterclaim was pleaded. Secondly the WSD clearly offends the rule in Order 6 rule 2 of the Civil Procedure rules in as far as no particulars of the fraud pleaded, has been provided. This has significance to the defendant's case as regards the status of his pleadings and the fact that he chose not to participate in these proceedings.

The first witness Charles Okolong PW1 a valuation expert told this court that he carried out in 1999 a rental valuation of the property in dispute. He told court that the property would have fetched shs 8,000,000 per annum in 2000 the figure going to shs 10 million and 11 million in the following rental years. He presented a report exhibited in court as P1 dated 23/11/1991. In this testimony the plaintiff who testified as PW2 told court that he bought

the suit property at shs 180 million in 1999. He was subsequently registered as owner in the same years. He presented in court a stamped agreement of purchase and a certified copy of the title deed (vide exhibits P1 and P6). He then went on to show court correspondence between him and the tenants on the building as well as the defendants advocates whose offices are at the suit premises.

From the evidence it is clear that the plaintiff is the registered proprietor of the suit premises. His title stands unchallenged either in the pleadings or by evidence. I agree that in terms of S.59 of the Registered of Titles Act this is conclusive evidence that ever since 1999 the plaintiff has been the registered owner of the suit property. Secondly there is also evidence that the plaintiff has been deprived of possession of his property by the defendant and his advocates who are tenants or occupants of the suit property referred to in the WSD as Plot 23 A and B. This is the case as no evidence of a competing title was given. I am unable to see any fraud in the plaintiff's title. See JWR Kazzora Vs ML. Rukuba CA No. 13 of 19992. The result is that the plaintiff is entitled to the declaration sought in the plaint. By virtue of deprivation of possession and rental the plaintiff is also entitled to special damages as prayed for. In order to protect his property the plaintiff would be entitled to a permanent injunction against the defendant, his recognized and other agents and or those claiming under him from interference with the management of the property. Accordingly the plaintiff would be put in possession to the exclusion of these people as are covered by this permanent restraining order. In the result I would enter Judgment for the plaintiff against the defendant for.

- (a) a declaration that he is the rightful owner of Plot 23 A Luwum Street Kampala LRV 259 Fol. 3.
  
- (b) Special damages of
  - (i) shs 8 million for each year of rental income from 1999 to the date of possession.
  - (ii) Interest on (i) at 20% per annum on accrual basis till payment in full.
  
- (c) A permanent injunction as stated herein above
  
- (d) general damages of shs 8,000,000 and interest thereon at 20% from the dated of Judgment till payment in full.
  
- (e) costs of this suit.

R.O. Okumu Wengi

**JUDGE**

14/10/2003.

**23/10/2003**

Bernard bamwine for plaintiff

None for defendant

Senabulya Court Clerk.

Judgment read in open court in the presence of above persons.

R.O. Okumu Wengi

**JUDGE**

23/10/2003.