THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISCELLANEOUS APPLICATION NO. 103 OF 2008

ARISING FROM CIVIL SUIT NO. 31 OF 2008

1. **GUNTER PIBER }**
2. **BUWEMBE BREWERS & DISTILLERS (U) LTD. } ::::::::::::::::::APPLICANTS/PLAINTIFFS**

VERSUS

1. **E. KRALL INVESTMENTS (U) LTD }**
2. **DRB DEUTSHCE ROHSTOFF & BERGBAU }**
3. **DRB MINING (U) LTD }::::::::: RESPONDENTS/**
4. **THOMAS EGGENBURG } DEFENDANTS**
5. **JOSEPH BYAMUGISHA }**

RULING

The applicants who are the plaintiffs in the main suit brought this application under Order 6 rules 8 and 30, Order 52 rules 1 and 3 of the Civil Procedure Rules (CPR) and s. 98 of the Civil Procedure Act (CPA) for orders that the respondents' defence in the main suit be struck out for failure to disclose a reasonable and specific response to the applicants' claim. They also sought an order that judgement be entered in favour of the applicants. In the event that the above orders were granted, the applicants sought to have the main suit set down for formal proof, and for costs of the application to be provided for.

The applicant's application was supported by the affidavit of Ronald Tusingwire, an advocate practicing with the firm of Kaggwa & Co, Advocates who are counsel for the applicants, which was dated 16/06/08.

The background to the application was that on 22/05/08, the applicants filed Civil Suit No. 31 of 2008 against the respondents. The respondents filed a WSD on 10/06/08. It is that WSD that is

being challenged in this application. In order to bring clarity to the issues which are specifically about the pleadings, I shall reproduce the important parts of the applicants' claim starting with paragraph 2 of the plaint.

2. The 2nd plaintiff is a limited liability company incorporated under the laws of Uganda and whose address of service for purposes of this suit shall be c/o Kaggwa & Co. Advocates, Plot 3 Pilkington Road, NIC Building, Annex, P. O. Box 6624, Kampala Uganda.

3. The 1st, 2nd and 3rd defendants are bodies corporate and are engaged in the business of mining in Uganda and elsewhere, the Plaintiffs' advocates undertake to effect service of court process upon them.

4. The 4th and 5th Defendants are adult male Austrian and Uganda respectively, believed to be of sound mind and are Directors in the 1st Respondent and the plaintiffs' advocates undertake to effect service of court process upon them.

5. The plaintiff's cause of action against the defendants jointly and severally is for a permanent injunction restraining the defendants from interfering, dealing with, disposing off (sic) and transacting in any way with the plaintiffs' interest as licencees on Plot M25, LRV 341, Folio 13, Land at Masese Jinja District and from breaching the agreement between the plaintiffs and the defendant, General damages and the costs of this suit.

6. The facts constituting the plaintiff's cause of action against the defendants jointly and severally arose as hereunder;

    a) By an agreement dated 20th May 2005, the plaintiffs obtained a licence from the 1st defendant comprising of a building wherein they own and operate an industry engaged in brewing and distilling of alcohol for sale in exchange for provision of security for the 1st defendant's assets on the suit land. (See Annexure "A").

    b) During the subsistence of the said licence the plaintiffs and the defendants orally agreed that the said licence was to run for the whole period of the lease from Kilembe

Mines Limited on condition that the plaintiffs pay ground rent, premium and the 1st defendant's legal fees.

c) The said oral agreement arose out of a suit filed by Kilembe Mines Limited against the 1st defendant for breach of the lease agreement for the suit property of which the plaintiffs fulfilled their obligation under the oral contract by paying the legal fees for the out of court settlement, premium and ground rent for the lease to Kilembe Mines Lawyers, M/s C. Mukiibi-Sentamu & Co Advocates. (Receipts and the consent judgment are attached as "B" and "C" respectively).

d) The defendants have over time approached the plaintiffs to advance them money for their expenses which the plaintiff have so far lent them money totalling to US$ 150,000 (United Stated Dollars one hundred fifty thousand only) of which part of the money was to be further consideration for the licence.

e) On 25th May 2005, the plaintiffs also purchased a Metallurgical plant including a steel building together with a mobile crane ATT 480 (HAZET) from the 1st respondent (sic) and paid valuable consideration of Ug. Shs 8,000,000/= (Uganda shillings eight million only). (See Annexure "D").

f) The plaintiffs have been in possession of the suit land since 1996 and carry out their business thereon.

g) The 1st, 2nd, 4th and 5th Defendants have in total breach of the various agreements enjoyed by the plaintiffs against them incorporated a sham company known as DRB Mining (Uganda) Ltd., the 3rd Defendant, to evict the Plaintiffs and take over their plant and mobile crane. (See resolution and notice of eviction marked "E" and "F").

7. The plaintiffs shall aver and contend that the above actions of the defendant breach the licence and other oral agreements, entitles them to an injunctive relief.

8. That the defendant's threats of eviction have caused grave mental torture to the 1st plaintiff and loss of income to the 2nd plaintiff as its business has been greatly affected of which (sic) they are entitled to damages.

9. By reason of all the foregoing, the plaintiffs will contend that there is just cause for the issuance of a permanent injunction against the respondents.

10. The plaintiffs have suffered damage, loss of income and inconvenience as a result of the defendants' acts and omissions.

The applicants thereafter stated that they issued a notice of intention to sue and that this court has jurisdiction in their cause, and listed their prayers, viz: a permanent injunction against the respondents, general damages, other reliefs that the court may deem fit, and the costs of the suit.

In the respondent's WSD filed on 10/06/08 they generally denied all the paragraphs of the plaint in the head paragraph, stating that they were all not admitted and had been traversed seriatim, as is the usual practice in suits of this nature. They then answered the plaint in the following manner:

1. Paragraph 1 is rooted (sic) but the defendants make no admissions as to the soundness of mind of the 1st plaintiff.

2. Paragraphs 2, 3 and 4 of the plaint are noted but no specific admissions are made.

3. Paragraph5 is denied in as far as if (sic) alleges a cause of action.

4. Paragraph 6 is denied in its entirety and the plaintiffs shall be put to strict proof of their frivolous allegations.

5. Paragraph 7, 8, 9 and 10 are completely false allegations and claims that are not sustainable in law.

6. The defendants' reply to all the allegations in the plaint shall show that the plaintiffs have no registerable interest in the law (sic) in issue.

7. Further the defendant shall show this suit to be a frivolous and vexatious one, intended to evict one of the defendants from its land and will pray for its dismissal with costs to be met personally by the plaintiff's counsel.

8. Further the defendant will show that the suit is filed in bad faith because there is already a pending suit previously filed by the plaintiff and with the same issued arising and plaintiff's counsel shall be faulted for unprofessional conduct.

9. The defendants shall show that a mere licensee has no right at law to evict the land owner or obtain the remedies such as the ones sought by the plaintiffs in this suit.

Wherefore the defendants pray that the plaintiff's suit be dismissed with costs.

On 18/06/08 the applicants filed this application to have the aforesaid WSD struck out under Order 6 rule 30 of the CPR. The respondents responded by filing an amended WSD on 23/06/08, without leave of court. The respondents now claim that the amended WSD is the operative defence that should be considered by this court, and not the WSD that was filed on 10/06/08, which was challenged in this application.

The applicant's application was based on the grounds that the written statement of defence (WSD) filed by the respondents on 10/06/08 disclosed no reasonable and specific response to the applicant's claim as is required by Order 6 rule 8, in as far as it constituted of general denials to the claims made in the plaint. Further that paragraphs 3 to 6 of the said WSD contained general denials to paragraphs 5 to 10 of the plaint and did not respond specifically to each of the allegations of fact that the respondents did not admit in their defence. It was also contended that the respondents' defence was prolix, frivolous and vexatious and an abuse of court process and that it was thus just and equitable that the defence be struck out since to continue with the trial would be a waste of courts time and a delay of justice.

Further grounds that were contained in the affidavit in support were more specific complaints about the respondents WSD. The applicants took issue with paragraphs 3 to 5 of the WSD for not responding specifically to the existence of a licence evidenced by Annexure A to the plaint. Annexure A was a letter from the 1st respondent to the 1st applicant confirming an agreement entered into between the 2 parties allowing the 2nd applicant to use all the equipment on site in Jinja as well as all equipment and other assets of E. Krall Investments Ltd (at the site).

The applicants further stated that paragraph 6 of the WSD did not respond specifically to paragraph 6 (a) through (g) of the plaint, i.e. the role of each of the respondents in evicting the applicant from the suit premises, incorporation of a sham company (the 3rd respondent) and taking over of the applicant's plant and mobile crane. The applicants also complained that paragraph 7 of the WSD was a general denial without any mention of the agreements annexed to the plaint and the consent judgment referred to therein between Kilembe Mines Ltd. and the 1st respondent. It was further stated that the WSD did not respond to the allegation that there was a contractual licence enjoyed by the applicants on the respondent's land. Further that paragraphs 8 and 9 of the WSD were evasive denials in so far as they did not respond to paragraphs 6 and 6 (d) of the plaint wherein the applicants raised the debt of UDS 150,000 owed by the 1st respondent to the applicants.

At the hearing of the application, Mr. Kaggwa for the applicants repeated the contents of the affidavit in support and submitted that the stated paragraphs offended the provisions of Order 6 rules 8 and 10 of the CPR and that as a result the WSD ought to be struck out and judgement entered in favour of the plaintiffs/applicants after which the suit should be set down for formal proof. He relied on the decision in the case of **Nile Bank Ltd. v. Thomas Kato & Others [1997-2001] EA, 325** where it was held that a defence such as the one filed by the respondents in the main suit offended the provisions of Order 6 rule 8 and it was struck out. He also relied on Odgers' Principles and Practice in Civil Actions in the High Court of Justice, Ed. 22 where it was stated that each party must traverse specifically each fact that he does not intend to admit. The party pleading must make it quite clear how much of his opponent's case he disputes and that merely denying will often be ambiguous.

The respondents filed an affidavit in reply opposing the application. Richard Tamale, an advocate with the firm of Andrew & Frank Advocates, counsel for the respondents, swore the affidavit on

19/08/08. The facts on which the respondents sought to oppose the application as deduced from the affidavit in reply were briefly that the current application was filed prematurely because the respondents were still well within time to file an amended WSD without leave of court. The respondents further contended that they had subsequently filed an amended written statement of defence with the result that the current application ought to be dismissed. It was also stated by the respondents that the current application before court was *"an exercise in futility and a vain attempt"* by the applicants to evict the 1st respondent from its land on the strength of a licence; that a permanent injunction could not be granted to a licensee in a manner that would disqualify the title of the registered proprietor (the 1st respondent). The respondents asserted that the defence complained of sufficiently responded to the "wild allegations" and prayers set out in the plaint, which would be largely determined on matters of law.

At the hearing of the application, Mr. Andrew Bagayi for the respondents repeated the contents of the affidavit in reply and submitted that the decision in the suit was to be made solely on points of law. He contended that the main issue in the suit would be whether the applicants were entitled to a permanent injunction against the respondents and that the WSD clearly addressed that point. He further contended that though the applicants complained that the WSD did not address bad faith because it had not been particularised, paragraphs 6 and 9 of the WSD addressed it. Mr. Bagayi also submitted that though the applicants complained that the respondents were threatening to take away the mobile crane and plant from them, that fact had not been substantiated; besides the crane had always been and is still in the possession of the applicants.

It was also the contention of Mr. Bagayi that the amended WSD filed by the respondents on the 23/06/08 dates back to the filing of the first WSD and that it should be considered as the operative pleading for the respondents. Further that in the presentation of their application the applicants had not demonstrated how the WSD complained against was going to prejudice their case. Mr. Bagayi was also of the view that the WSD complained of falls squarely within the category of cases that are addressed by Article 126 (2) (e) of the Constitution of the Republic of Uganda. That the matters that had been raised by the application were mere technicalities and if the application was allowed by court and the WSD struck out, substantive justice would not have been done. He prayed that the amended WSD be allowed in the spirit of Article 126 (2) (e) of the Constitution.

In order to save time court allowed the respondents to raise an objection against the plaint though it had neither been specifically pleaded in reply to the instant application nor in the WSD. Court considered that this would not prejudice either of the parties and would enable court to deal with all issues to do with pleadings at one go. The respondents' counsel then raised 2 objections, firstly, that the 4th and 5th defendants/respondents were directors of the 1st defendant and they were wrongly sued because at all material times, the 4th and 5th respondents had acted in their capacity as directors of the company; they could not be held liable for any wrongs of the 1st respondent.

The second objection was that the applicant(s) were only licensees in respect of the property in dispute, which was held by the 1st respondent as a registered proprietor of a lease from Kilembe Mines Ltd. It was submitted that the applicants being equitable licensees with no registerable interest in the land could not bring an action for a permanent injunction against the 1st respondent. Mr. Bagayi contended that a licence is a mere personal or revocable privilege to perform an act on the land of another. It does not operate to confer or vest in the holder any title, interest or estate in the property; it is not even assignable. Mr. Bagayi was of the view that the applicants' rights over the land were only equitable and could be brought to an end by the respondent's issuing a notice to terminate the arrangement. Relying on the case of **Chandler v. Kelly [1972] 2 All E.R. at 942,** Mr. Bagayi submitted that a licensee has no right at law to remain on the land. He added that if the remedy of a permanent injunction, which was the main remedy that the respondents sought, was granted it would in effect be ejecting the 1st respondent, a registered lessee from the land. Mr. Bagayi finally submitted that since such an order could not be attained, the plaint should be struck out.

The parties' pleadings and counsels' submissions raise several issues that that can be summarised as follows:

i) Whether the respondents properly filed an amended WSD as alleged in paragraph 5 of the affidavit in reply; if not,

ii) Whether the respondent's WSD filed on 10/06/08 contravened the requirements for pleading contained in Order 6 rules 8 and 10 of the Civil Procedure Rules; if not,

iii) Whether the respondent's defence ought to be struck out; and if so,

iv) Whether the applicants would then be entitled to an interlocutory judgment against the respondents for the orders prayed for, and subsequent formal proof of damages for breach of contract.

I shall now answer the issues raised above in the order in which I have stated them.

Regarding the propriety of filing an amended WSD, the CPR provide for amendments of pleadings both generally and specifically. Order 6 rule 19 provides for amendments, generally, while rules 20 and 21 provide for specific amendments of the plaint and the WSD. Order 6 rule 21 provides, and I quote:

> "A defendant ***who has set up any counterclaim or setoff*** may without leave amend the counterclaim or setoff at any time within twenty-eight days of the filing of the counterclaim or setoff, or, where the plaintiff files a written statement in reply to the counterclaim or setoff, then within fourteen days from the filing of the written statement in reply." (Emphasis supplied)

The terms of Order 6 rule 21 are very clear. It is only a defendant who sets up a counterclaim or setoff that is entitled to amend his/her WSD without leave of court. This is to be done within 28 days of filing the counter claim or set off, or within 14 days after the plaintiff's reply to the counter claim or set off. It would appear the CPR limits amendments without leave to plaintiffs only since a litigant who sets up a counterclaim thereby becomes a plaintiff to the counterclaim. The litigant who sets up a setoff is also placed in the same position as a claimant who has to prosecute his claim. It is also important to note that such amendment is limited to amendment of the *setoff or counterclaim only*.

The terms of respondent's WSD have been set out above. There is no counterclaim or setoff set up by the respondents against the applicants. I have found no other rule other than rule 21 of Order 6, which allows defendants to file an amended WSD apart from rule 19 of Order 6. The latter allows amendments by any party to the suit after leave of court has been obtained. It is thus apparent that the respondents had no right to file an amended WSD without leave of court. The respondent's

amended WSD that was filed on 23/06/08 without leave of this court was therefore improperly filed. It cannot be considered as a pleading in the main suit or for purposes of this application.

Having established that the WSD filed on the 10/06/08 is the operative defence for purposes of the main suit and therefore this application, I now turn to the issue whether the said WSD offended the provisions of Order 6 rules 8 and 10 of the CPR.

In paragraphs 2, 3 and 4 of the plaint, the applicants described the 2nd plaintiff and the 1st, 2nd and 3rd defendants as limited liability companies doing business in Uganda. In response thereto, the defendants merely stated in paragraph 2 that they had noted the contents of the said paragraphs but no admission was made as to the contents thereof. In other words, the defendant in a general manner denied that the said parties were limited liability companies. However, they did not specify in what capacity they were operating, if they were not limited labiality companies as stated in the plaint.

It is wrong to deny plain and acknowledged facts, or any fact which it is not in one's client's interest to deny. As a rule, each party should admit whatever facts can be proved against him/her without trouble. Moreover, it looks weak to deny everything in the opponents pleading. It suggests that one has no substantial defence to it. In addition, by rashly traversing statements which are obviously true, much unnecessary expense may be caused [See **Lever Brothers v. Associated Newspapers [1907] K.B. 628.]**

In paragraph 6 (a) through (g) the plaintiffs stated the facts from which the cause of action against the defendants arose. The plaintiff's claim was that there is a licence that was granted to the 2nd applicant by the 1st respondent, which was evident from Annexure A to the plaint. They also claimed to have subsequently reached oral agreements with the 1st respondent for the licence to run till expiry of the contract with Kilembe Mines Ltd. In consideration of the oral agreements the applicants claimed in paragraphs 6 (b), (c) and (d) that they paid certain monies to C. Mukiibi-Sentamu & Co., Advocates on behalf of the 1st respondent as legal fees, to Kilembe Mines Ltd as rent in respect of the lease to the disputed property, and lent the 1st respondent up to US$ 150,000. The first two payments were evidenced by receipts annexed to the plaint that had been given to the applicants in acknowledgment by Mukiibi-Sentamu & Co. Advocates and Kilembe Mines Ltd. The respondents' made no specific response to these allegations in the WSD. Their response in paragraph 4 was a

general denial of the whole of paragraph 6, and a threat that the applicants would be put to strict proof of their allegations.

Paragraph 6 (e) was that the 1st respondent purchased a mobile crane and plant from the 1st respondent for shs 8,000,000/=. The respondent attached an invoice to the plaint to show that there was such a transaction. Applicants also stated in paragraph 6 (f) that they had been in occupation of the disputed land for 6 years, and in paragraph 6 (g) that the respondents were in breach of the agreements between the parties that had been referred to in paragraphs 6 (a), (b) and (c). The general response to this was again paragraph 4 wherein the respondents denied all the contents of paragraph 6 and stated that the applicants would be put to strict proof thereof.

The respondents went on to plead in paragraph 5 that paragraphs 7, 8, 9 and 10 of the plaint were completely false allegations and claims that could not be sustainable in law. They did not state the law that the applicant's claim offended so as not to be sustainable. Respondents also pleaded generally in paragraph 6 of the WSD that in reply to all the applicants' allegations in the plaint they would show that the plaintiffs had no registerable interest in the land in issue. Clearly this was not an intelligible answer to all the claims in the plaint, for example it could never be an answer to the claims made in paragraphs 6 (c) and (d) which related to monies paid by the applicants on behalf of the 1st respondent.

The respondents further pleaded in paragraph 7 that the suit was a frivolous and vexatious one that was intended to evict one of the respondents from its land. The respondents did not specify which one of the respondents this answer referred to. This particular paragraph remained ambiguous because the applicants' complaint in this regard was against the 1st and 3rd respondents.

In paragraphs 8 of the WSD, the respondents pleaded that they would show that the suit was filed in bad faith because there was a pending suit previously filed by the applicants with the same issues. They contended that counsel for the applicants would be faulted for unprofessional conduct. Even in this case, the respondents did not state which suit they referred to and the court in which it had been filed. Neither did they specify which conduct of counsel for the applicants was unprofessional. As it turned out, the suit that was pending in the Magistrates Court has completely different issues; it was an action under the Access to Roads Act, not in issue in this suit.

In paragraph 9, the respondents pleaded that they would show that a mere licensee had no right at law to evict the land owner or obtain the remedies sought by the applicants in the suit. They again did not state which law they referred to. Neither did they indicate the specific remedies that they intended to challenge. It is clear from the plaint that the applicants sought a permanent injunction and damages. The respondents ought to have specified which remedies they challenged in paragraph 9.

The function of pleadings is to ascertain with precision the matters on which the parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision. In order to attain this object, it is necessary that pleadings interchanged between parties should be conducted according to certain fixed rules. The main purpose of those rules is to compel each party to state clearly and intelligibly the material facts on which he/she relies, omitting everything immaterial and then to insist that his/her opponent frankly admit or explicitly deny every material matter alleged against him. By this method they must speedily arrive at an issue (Odgers, supra at page 88). Orders 6, 7 and 8 of our Civil Procedure Rules specifically aim at this.

Order 6 rule 8 provides:

> "It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages."

As indicated above, it is clear that the respondents' WSD in general, but more particularly paragraphs 4 and 6 thereof offended the rule in Order 6 rule 8. It also offended the provisions of Order 6 rule 10 in paragraph 5 where it was stated that all the claims in paragraphs 8 and 10 where completely false allegations that could not be sustained in law. That statement was an evasive denial.

According to Odgers Principles of Pleading and Practice, 22 Edition at page 136,

> "It is not sufficient for a defendant in his defence to deny generally the allegations in the statement of claim, or for the plaintiff in his reply to deny generally the allegations in a counterclaim. Each party must traverse specifically each allegation of fact, which he does not intend to admit. The party pleading must make it clear how much of his opponent's case he disputes."

Clearly the respondents departed from this rule of practice. Order 6 rule 30 provides that the court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer. This court considered this rule in the case of **Nile Bank Ltd. v. Thomas Kato [1997-2001] EA, at page 325**, which was cited by counsel for the applicants. It was there held, following the decision in **Obidegwu F. v. D. B. Semakadde, High Court Civil Suit No 59 of 1992** (unreported) that the rule in Order 6 rule 8 is mandatory. Where the party pleading fails to follow it, the pleading is struck out under Order 6 rule 30.

In the instant case, the applicants pleaded a contract for a licence between them and the 1st respondent. A copy of the letter confirming the contract was annexed to the plaint as Annex "A." The defendant chose not to address it but to deny it in general terms in paragraph 4 of their WSD. The applicants also pleaded that there were monies had and received by the 1st respondent or by others on their behalf as a result of the licence, in paragraphs 6 (c) and (d) of the plaint. The respondents again chose to deny them generally without much ado. If the respondents did not admit these claims they ought to have addressed them specifically, not as they did in their paragraphs 4 and 6 of the WSD.

I find that paragraphs 7, 8 and 9 of the WSD do not cure this defect in the WSD. In particular paragraphs 6 and 9 of the WSD could never be an intelligible response to a claim for moneys that the applicants claimed to have been paid on behalf of the 1st respondent, or lent to them. Consequently, I find that the defence did not raise a reasonable answer to the applicant's claim. It is accordingly struck out.

As to whether the applicants are entitled to an interlocutory judgment against the respondents and subsequently to formal proof of damages claimed, I now turn to the respondent's objection to the plaint, and specifically to the applicant's claim for a permanent injunction against the 1st respondent.

I have not dealt with the first objection raised by the respondents regarding the parties to the suit because I find that the second objection substantially deals with the defect in the applicants' pleadings. It was submitted for the respondents that the applicants had not right to bring a suit against the 1st respondent for a permanent injunction because it would amount to an action to evict the 1st respondent.

The 1st respondent has a registered interest in the land under dispute holding a sub-lease from Kilembe Mines Ltd. The respondents did not specifically plead the fact in the WSD. The respondents glossed over this fact by referring to the 1st respondent as "a land owner" in paragraph 9 of the WSD, and repeatedly stating that the applicants merely had a licence, a right that was inferior to that of the 1st respondent. It was only later specifically pleaded in the affidavit in reply to this application in paragraph 7.

However, Annexure "C" to the plaint, a consent judgment between Kilembe Mines Ltd and the 1st respondent in High Court Civil Suit 248 of 2004 shows that there was outstanding rent on a sublease registered in LRV 341 F.13 at Masese Jinja. The amount paid in final settlement thereof was UD$ 30,000. The applicant claimed to have paid this amount to Kilembe Mines according to a tax receipt from Kilembe Mines Ltd dated 4/11/05, included in group Annexure "A" to the plaint. It is these facts which lead court to the conclusion that the 1st respondent was a registered owner under the Registration of Titles Act, not the respondent's pleadings.

The law relating to actions in such cases is s. 176 of the Registration of Titles Act where it is provided:

> "No action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases —
>
> a) the case of a mortgagee as against a mortgagor in default;
> b) the case of a lessor as against a lessee in default;

c) the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;
d) the case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of the other land or of its boundaries as against the registered proprietor of that other land not being a transferee of the land bona fide for value;
e) the case of a registered proprietor claiming under a certificate of title prior in date of registration under this Act in any case in which two or more certificates of title may be registered under this Act in respect of the same land,

and 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."

The import of s. 176 was discussed by the Supreme Court of Uganda in **The Executrix of the Estate of the Late Christine Mary Tebajukira & Deborah Namukasa v. Noel Grace Dhalita Stananzi, Supreme Court Civil Appeal No. 2 of 1988 (Unreported).** In that case, the Supreme Court held that in any action against a registered proprietor other than in the instances named in s. 184 (now s. 176) of the RTA, the certificate of title is an absolute bar, any rule of law or equity to the contrary notwithstanding. (See also **Francis Butagira v. Deborah Namukasa, Supreme Court Civil Appeal No, 6 of 1989** (Unreported)).

In that case, the respondent sought to challenge the physical re-entry against a lease that had been effected by the appellant for non-payment of rent. It was found that the certificate of title held by the appellant was an absolute bar to an action for trespass. The court found that the respondent had by his action for trespass against his landlord challenged her title. Court declined to grant the remedy of relief against forfeiture for (among other reasons) that the very action in which the respondent purported to sue for trespass was barred by s. 184 (now 176) of the RTA. In like vain, I find that the applicant's action against the 1st respondent for a permanent injunction was in effect an action for ejectment and thus agree with Mr. Bagayi's submission in that regard. Entertaining such an action

would no doubt offend the provisions of s. 176 of the RTA. It would have benefited the respondent's WSD if s.176 of the RTA had been pleaded.

Order 6 rule 11 (d) of the CPR provides that where the suit appears from the statement in the plaint to be barred by any law, the plaint may be rejected. The applicants' plaint is barred by s. 176 of the RTA. It is accordingly rejected.

As to whether the applicants would have been entitled to set down the suit for formal proof of the general damages claimed in the suit after striking out the respondents' WSD, it is my considered opinion that that could not happen. Proof of damages normally refers to proof of special damages, general damages being a measure that is often determined judicially, i.e. according to the discretion of the court depending on the injury that is complained of. In the instant case, although the applicants referred to certain monies, viz: US$ 150,000 being a debt alleged to be due from the 1st respondent and US$ 30,000 paid to M/s Kilembe Mines Ltd as rent for the sub-lease, the applicants did not claim for refund of the same. Claiming the refund would have been in the way of special damages. It is trite law that special damages must be specifically pleaded and then proved. In the absence of this, I am unable to agree with counsel for the applicants that the suit should have been set down for formal proof.

In conclusion, I must comment about the unfortunate result of these proceedings. The applicant's plaint has been rejected and the respondent's defence struck out. None of the parties has gained anything from this action. This unfortunate result arose from the mistakes made in the pleadings by counsel for both the applicants and the respondents. I shall therefore make no orders as to costs.

Irene Mulyagonja Kakooza
JUDGE
30/10/08