

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
CIVIL SUIT NO. 0109 OF 2011

ANNET ZIMBIHA ::: PLAINTIFF

VERSUS

ATTORNEY GENERAL ::: DEFENDANT

BEFORE: HON MR. JUSTICE BASHAIJA K. ANDREW

JUDGMENT

Annet Zimbiha (hereinafter referred to as the “plaintiff”) brought this suit against the *Attorney General* of the Republic of Uganda (hereinafter referred to as the “defendant”) for conversion and trespass to land located at Rwamuranga Cell, Kajaaho Parish and Kikagati Sub- County in Isingiro District (hereinafter referred to as the “suit land”). The said suit land forms part of the late Elieza Zimbiha’s estate; of which the plaintiff is the administratrix. The suit land was taken over and has since 1964 been occupied and utilized by the Uganda Government which established a refugee settlement camp thereon called the Orukinga Settlement Camp.

The Plaintiff seeks the following reliefs:

- a) A declaration that the late Zimbiha Elieza was the lawful owner of the suit land.***
- b) An Order for vacant possession of the suit land by the Defendant and/or his agents.***

- c) In the alternative an Order for payment of compensation of the value of the suit land at market value and for illegal occupation thereof as pleaded in paragraph 4(g) of the Plaintiff.*
- d) General damages*
- e) Exemplary damages*
- f) Costs of the suit*
- g) Interest on (c) above at 24% per annum from the date the cause of action arose till payment in full.*

At the Scheduling Conference, the following were the agreed facts by the parties:

- (i) That the plaintiff is the Administratrix of the estate of the late Elieza Zimbiha.*
- (ii) That the land in dispute which is located at Rwamuranga Cell, Kajaaho Parish, Kikagati sub- county in Isingiro District forms part of the late Elieza Zimbiha's Estate.*
- (iii) That the land in dispute has since 1964 been occupied and utilized by the Uganda Government which established a refugee settlement camp thereon; that is, the Orukinga Refugee Settlement.*
- (iv) That the Government of Uganda has never compensated the beneficiaries of the late Elieza Zimbiha's Estate for occupation and use of the land.*
- (v) The plaintiff as an administratrix is entitled to compensation for the value and use of the Estate land.*
- (vi) The defendant has not yet established the value of the land in dispute.*

(vii) The plaintiff has established the value of the land in dispute.

The following issues were framed and agreed upon by the parties for resolution of this court:

(1) Whether the plaintiff is entitled to compensation for land in dispute; and if so, by how much.

(2) Whether the plaintiff is entitled to mesne profits.

(3) What rate of interest is applicable on (ii) above?

(4) What other remedies are available to the parties?

Counsel for the defendant raised preliminary objections which merit immediate disposal; just in case they might have a bearing on the rest of case. The first one is that the plaintiff's suit is caught up by the doctrine of laches that embodies the Latin maxim; *vigilantibus non dormientibus aequitas subvenit* which simply means that: "*equity aids the vigilant not those who slumber on their rights.*" Counsel submitted that the doctrine effectively bars claims by plaintiffs whose unreasonable and inexcusable delay in bringing a claim results in prejudice to the defendant.

For this doctrine, Counsel cited an article by Elizabeth T. Kim entitled "***To Bar or not Bar? The Application of the Doctrine against a Statutorily Mandated Filing Period.***" (Published by UC Davis Law Review Vol. 43:1709), and argued that the plaintiff in the instant case had actual and constructive knowledge of facts, but did not assert her right from 1964 when Government took over the suit land till 2009 when she filed this suit, which has inequitably prejudiced the defendant, and that the suit should for that reason be dismissed.

In response Counsel for the plaintiff submitted that the doctrine of laches does not obtain on the facts of the instant case because the doctrine refers merely to delay not amounting to a bar by statute of limitation, and its validity is to be weighed against principles substantially equitable. That it is inconsistent with equitable principles to bar relief on ground of delay without examining the principles involved, particularly after court had ruled its prosecution to be within the statutory time limit. Counsel cited the maxim that; “equity aids the law”, arguing that for a party to rely on laches the issue must be pleaded; which was never done in this case.

I must confess that it is puzzling to me as to why a preliminary objection based on this point was brought up again when it was duly litigated by the parties in ***Annet Zimbiha v. Attorney General, Mbarara Chief Magistrate’s Court Civil Suit No.05 of 2009***; and it was resolved with court having found that the cause of action was brought within the statutory time limit. It would be untenable for the defendant to now attempt to rely on equitable principles to readdress an issue governed by statutory provisions, which the court had already determined as being within statutory time limit. The attempt amounts to bringing to court the same defence earlier raised, but only in another way this time couched in equity, yet the principle is that; *equity follows the law*. See ***James Semusambwa v. Rebecca Mulira, C.A.Civ.Appeal No.1 of 1999***; ***Mark Xavier & A’ nor v. Stephen Aisu, Company Cause No. 27 of 2005***.

The rationale of the doctrine of laches is that it would be unjust to give a plaintiff a remedy where he or she has by his or her conduct done or omitted to do that which might fairly be regarded as equivalent to a waiver of it. In effect the doctrine is defined by the plaintiff’s neglect to assert a right or claim which,

taken together with the lapse of time and other relevant circumstances causing prejudice to the adverse party, would certainly operate as a bar in a court of equity. See *Ex parte A.R Show, In Re Diamond Roch Bring Co Ltd. (1677) QBD 463; Boyes v. Guthure [1969] EA 385*. The neglect to enforce one's right or claim for an unreasonable and unexplained length of time under circumstances permitting diligence to do what in law ought to have been done calls into full operation of the doctrine of laches.

At the same time, for a party to rely on the doctrine of laches he or she must be prepared to demonstrate that no specific statutory limitation provisions to a cause exist, and that there exists an element of estoppel conduct on part of the plaintiff. Such element must manifest itself as inducement, misrepresentation, silence or acquiescence. See *In Re Milton Obote Foundation and In Re an Application [1997] HCB 79*.

Applying the test to the facts of the instant case, clearly the *Limitation Act* comprehensively provides for limitation periods which specifically cover the causes of action in trespass and conversion under which the suit was brought. It follows then that the doctrine of laches would not operate in this case.

It is also noted that defendant's objection sharply contradicts the doctrine of *res judicata*. Where an issue has been settled by a court and no appeal lies, the parties cannot again be heard to call the issue to question and have it tried all over again by the same court any time thereafter. *Section 7* of the *Civil Procedure Act*, which encapsulates the doctrine of *res judicata* is instructive, and it states that:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”

The legal implications of an issue being *res judicata* are well settled. In ***Kamunye v. Pioneer Assurance Ltd [1977] EA 263***, Sheridan J (as he then was) put the test whether or not a suit is barred by *res judicata* in the following words (at page 265 of his judgment):

“The test... seems to me... is the plaintiff in the second suit trying to bring to court in another way and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of res judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence, might have brought forward at the time.”

Given the above legal position, the preliminary objection raised by Counsel for the defendant on this point is devoid of merit and it is overruled.

The other point which was raised by Counsel for the defendant relates to the ownership of the suit land, which was raised “without prejudice”. Counsel argued that the plaintiff led no evidence to prove customary ownership of the suit land prior to 1964, and that the land ownership system during colonial period in Uganda was such that all land had been alienated to the Crown Land and was owned by the Protectorate Government, save for a few parcel that were given out to be owned privately by kings and chiefs; evidenced by the signing of several agreements such as the *Ankole Landlord and Tenant Law 1937*.

Counsel further argued that the suit land was Crown Land by virtue of *Section 11(1) of Public Lands Act 1962*, which vested all such land immediately prior to the commencement of the said Act in the *Uganda Land Commission*, and that the *Land Reform Decree 1975* declared all land in Uganda to be administered by the *Uganda Land Commission*, and that this negates the plaintiff’s claim of customary ownership of the suit land prior to 1964.

Counsel for the plaintiff responded that the issue of ownership was an agreed fact at the Scheduling Conference, and that there can be no any back-tracking on the agreed facts, which cannot be litigated upon during the hearing. Further, that the facts agreed by the parties are deemed to be admissions and are thereafter not in dispute. Furthermore, that the *Land Reform Decree (supra)* upon which Counsel for the defendant premised the arguments was repealed by the 1995 *Constitution of the Republic of Uganda*, and is not applicable to the suit land.

To resolve this issue the starting point, in my view, is the legal position as it relates to admissions. Under *Section 28 of the Evidence Act* an admission by a

party is not conclusive proof of a fact in issue, but it operates as estoppel. In addition, **Section 57 of the Evidence Act** is to the effect that facts admitted need not be proved, but that they are regarded as established. See ***Yusuf Ali Mohamed Osman v. DT Dobie & Co. (T) Ltd [1963] E.A. 288.***

Applying the above principles to facts of the instant case, it is clear that the ownership claim to the suit land by the plaintiff was never contested at the trial as it was never made an issue. The agreed facts, particularly *fact No. (1) and (ii)* are categorical that the plaintiff is the administratrix of the estate of the late Elieza Zimbiha; and that the suit land forms part of that estate. To the extent that the parties duly agreed to, and admitted to these facts at the Scheduling Conference, they are taken as established and the defendant is estopped denying the agreed facts, which cannot be litigated upon.

The purpose and object of Scheduling Conference under **Order 12 r. 2 Civil Procedure Rules** are, *inter alia*, to expedite trials before court by enabling the parties to sort out points of agreements at the earliest, which are then not litigated upon; and issues for litigation – only upon which they may proceed at hearing. See ***Stanbic Bank (U) Ltd v. Uganda Cros Ltd, S.C.Civ.Appeal No. 04 of 2004(UR); Tororo Cement Co. Ltd. v. Frokina International Ltd., S.C.Civ. Appeal No.2 of 2001.***

It is, therefore, untenable for a defendant who admitted to facts on court record at the commencement of the trial now turns around and attempts to renege on the same facts freely agreed upon and admitted. Such attempt is rather futile and amounts to legal dishonesty; an absurdity no reasonable courts of law would countenance.

There is also no merit in the argument that the defendant cannot be ejected from the suit land by virtue of the provisions of **Section 176 of the Registration of Titles Act**; the defendant being the registered proprietor of the suit land. At the risk of repetition, the plaintiff's claim of ownership of the suit land was never made an issue and not contested at the trial; hence it cannot be raised now. The defendant agreed to the fact of the plaintiff being the administratrix of the late Elieza Zimbiha's estate, and the suit land constituting part of the said estate. Logically, an administratrix' claim to ownership would essentially be rooted in the operation of the **Succession Act**, not through registration under the **Registration of Titles Act**. Accordingly, any argument on the non - ejection of the defendant would not arise.

It is emphasised that where evidence in chief by a party to proceedings is not challenged by the opposite party on a material or essential point either through cross-examination, or put in issue by the opposite party who had opportunity to do so, it leads to the inference that the evidence is accepted; and it is always open to the court seized with the matter to act upon such evidence before it. See **Uganda Revenue Authority v. Stephen Mbozi, S.C.C.A No. 26 of 1995; James Serubiri & Fred Musisi v. Uganda, Criminal Appeal No. 5 of 1990**. Evidence of the plaintiff as regards ownership of the suit land remained challenged, and the objection lacks substance, and it is overruled.

I now turn to the issues, which I will resolve in the order and manner in which they were framed and argued by Counsel for both parties. *Issue No. (i), (ii) and (iii)* were argued jointly by Counsel for the plaintiff and responded to in an omnibus fashion by Counsel for the Defendant.

Counsel for the plaintiff submitted that the suit land was compulsorily taken over, and has since 1964 been occupied and utilized by the Uganda Government, which has never compensated the beneficiaries of the estate of the late Elieza Zimbiha, and that the plaintiff is entitled to compensation for the value and use of the suit land. Counsel cited **Article 26(2) (b)(i) of The Constitution of the Republic of Uganda**(*supra*), arguing that upon compulsory acquisition of land, Government ought to make prompt payment of fair and adequate compensation to the plaintiff.

Counsel further submitted that it is not in dispute that the plaintiff is entitled to compensation, and that it is the plaintiff's fundamental constitutional right to be paid adequate compensation for the occupation and use of the suit land by the Government of Uganda; and that the issue now is, not whether the plaintiff should be compensated, but how much compensation ought to be paid.

At the trial it emerged that the main issue was not whether the plaintiff should be compensated, but by how much she ought to be compensated. The issue being a factual and technical one, the court ordered the parties to submit valuation reports in support of their claims. The plaintiff submitted her valuation report which was admitted as "*Exhibit P1*", and the defendant failed to do so. Court directed that if by the next date of adjournment the defendant had not submitted their own report the trial would be informed by the only report in evidence. Despite the several adjournments, the defendant failed to submit its valuation report.

Evidence was led on “*Exhibit P1*” by Richard Ivan Mungati Nagalamwa (PW2) a registered Surveyor of vast experience in land valuation. The following is the summary.

- (i) Value of bare land 2,002 acres – Shs. 3,000,000,000= (*Three billion*).
- (ii) Amount due as ground rent/withholding land for 46 years –Shs. 4,300,000,000= (*Four billion three hundred million*).
- (iii) Disturbance allowance at 30% Shs. 2,190,000,000= (*Two billion one hundred ninety million*).
- (iv) Total Shs. 9,490,000,000= (*Nine billion four hundred ninety million*).

No evidence in rebuttal of the plaintiff’s testimony or the valuation report was adduced by the defence, and the legal implication is that the report and testimony of the witness are taken as uncontroverted, hence admitted. See ***Uganda Revenue Authority v. Stephen Mbozi, (supra); James Serubiri & Fred Musisi v. Uganda,(supra)***.

Counsel for defendant attached a copy of the Chief Government Valuer’s report of the land values to support their case. With due respect, the report is inadmissible as it was never tendered in court and evidence led on it. Mere attachment to Counsel’s submissions without leading any evidence on it; either by its author or any other competent witness simply renders the report a worthless document. Similarly, Counsel’s submissions cannot by extension be construed as evidence, and hence the Chief Government Valuer’s report was just a smuggled document on the court record and can, at the best, only amount to evidence from the bar; which is legally untenable. The defendant had the

option to seek leave to lead evidence on it, but either choose not to, or simply failed to do so, which renders the report of no evidential value.

Counsel for the defendant attacked the plaintiff's valuation report, *Exhibit P1*, basing mainly on perceived errors, and argued that these rendered it unreliable. In particular Counsel pointed out the variations in the acreage of the suit land which *Exhibit P1* puts at 2,002 acres; which is in sharp contrast to *Annexure 2(ii)* to the amended plaint with 1503.65 acres. Counsel strongly argued that the difference of 489.38 acres cannot just be a mere error, but is so grave that it casts lots of doubt on the entire report.

Counsel for the defendant then proceeded with reference to the Chief Government Valuer's report attached to his submissions, which gave the total acreage of the suit land as 1259.136 hectares (approximately 3,111 acres) and put the value per acre at Shs. 1,500, 000/=; similar to what the plaintiff's valuer (PW2) gave in his testimony. Counsel argued that the size of the land as given in the report by the plaintiff's Valuer does not add up to the total figures given in the plaintiff's pleadings, and opined that the plaintiff actually does not know the exact size of the land she claims to be hers.

With due respect, Counsel for the defendant argued basing on the presumed existence of Chief Government Valuer's report; which was discounted as being of no evidential value. It is thus unobtainable to premise ones submissions on it. Besides, there are no errors as a result of variation as purported by the defence. *Annexure 2ii* to the amended plaint was neither tendered nor proved in evidence. It is, at any rate, an incomplete report whose findings (on page 1) end

with *item No. 7*; whereas *Exhibit P1* which was tendered and admitted in evidence ends at *item No 10*.

Apart from the above observation, the sketch (drawn not to scale) in *Annexure 2(ii)* does not feature *Block A (9.0 acres)* and *Block C (489.29 acres)* which are clearly reflected in *Exhibit P1*. Simple computation easily shows that the 489.38 acres pointed out by Counsel for the defendant as a variation is actually *Block C*, which is part of the suit land, and hence there is no variation to speak of. Accordingly, Court adopts the size and values as given in *Exhibit P1*, which disposes of the particular issue as regards the size and value of the suit land.

The other point of contention concerns the *mesne* profits. It was argued for the plaintiff that the valuation report *Exhibit P1* (page 5, *Item No. 11.2* thereof) gives the value of ground-rent for forty-six years calculated at Shs. 4,300,000,000= (*Four billion three hundred million*). The justification for this claim, according to the plaintiff, is that the Government of Uganda has been in occupation of the suit land for forty-eight years now, which makes the current value as rent today of Shs. 4,486,956,522= (*Four billion four hundred eighty six million nine hundred fifty six thousand five hundred twenty two*). Counsel argued that the stated value is reasonable and should be awarded as *mesne* profit to the plaintiff.

Counsel for the defendant opposed the proposition arguing that *mesne* profits would only obtain where there exists a landlord- tenant relationship; which the plaintiff failed to demonstrate in this case. Further, that *mesne* profits are assessed on basis of the value of the premises at the time, and the land lord should aver in his pleadings what he alleges as annual value of the premises and

must be prepared to prove it. Counsel cited the case of ***George Kasedde Mukasa v. Emmanuel Wambedde & 4 Or's HCCS No. 459 of 1998*** to buttress this proposition.

Counsel for the defendant further submitted that while assessing the quantum of *mesne* profits the factors such as location of the property, its comparative value, condition and profits that are actually gained or might have been gained from reasonable use of such property are generally taken into account. Further, that the criteria for calculation of *mesne* profits is not what the owner loses by deprivation of the possession on basis of what the person in possession had actually received or might with due diligence have received from the property. Counsel also added that the plaintiff did not plead the rent which she used to derive from the suit land, and that no evidence was led to prove that the suit land was in tenantable state which could entitle the plaintiff to claim *mesne* profits.

The position of the law on *mesne* profits is settled. ***Section 2(m) of the Civil Procedure Act (Cap. 71)*** defines *mesne* profits 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”.

In the case of ***George Kasedde Mukasa v. Emmanuel Wambedde Or's (supra)***, Mukiibi J. stated, and correctly so in my view, as follows:

“ It is settled that wrongful possession of the defendant is the very

essence of a claim for mesne profits. See Paul Kalule v. Losira Nonozi [1974] HCB 202 (SAIED, J as he then was)...

The usual practice is to claim for mesne profits until possession is delivered up, the court having power to assess them down to the date when possession is actually given.

In Elliott v. Boynton [1924] 1 Ch. 236 (C.A) Warrington, L.J, at page 250 said:

“Now damages by way of mesne profits are awarded in cases where the Defendant has wrongfully withheld possession of the land from the Plaintiff.”

The Learned Judge went on to state that in *Clifton Securities Ltd. v. Huntley & Or's [1948] 2 All E.R 283 at p. 284, 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 the rent, but, if the real value is higher than the rent, then the mesne profits must be assessed at the higher value.”

It is clear that the landlord-tenant relationship as between the plaintiff and the defendant is not necessarily the determining factor in *mesne* profits. This is particularly so where the suit land was taken over under circumstances of compulsorily acquisition by the defendant in 1964, because no such form of tenancy as envisaged in the above authorities exists. In addition, the definition under **Section 2(m) CPA (supra)** does not seem to include the landlord-tenant relationship as an essential ingredient. What is in issue is whether having been

in occupation of the land so compulsorily acquired for the stated period the defendant would be liable in *mesne* profits, and what the quantum is.

Whereas the compulsory acquisition of the suit land by the defendant in this case was lawful, the occupation and utilization without prior compensation contravened provisions **of Article 26 of the Constitution** and made it unlawful; for which the defendant is, in my view, liable in *mesne* profits. Based on the valuation report, *Exhibit P1*, and the testimony of PW2, the occupation and use of the suit land for forty- eight years now puts the total proven value of the current rent at Shs. 4,486,956,522=; which Court awards as *mesne* profits to the plaintiff.

On the issue of interest on *mesne* profits, the plaintiff's Counsel argued basing on the case of ***Kananura Joseph & Or's v. Mbarara District Local Government & Or's, H.C Civil Suit No. 98 of 2008***, where this court took into account the economic realities, and guided by the borrowing and lending bank rate, considered interest rate of 25% per annum reasonable. The defendant's Counsel opposed this proposition arguing that the current circumstances cannot inform the position as it was in 1964 when the Government took over the suit land, and that the ruling rate ought to be the court rate since as from 1964 the circumstances have been versatile.

The position of the law on this point under ***Section 26(2) of the Civil Procedure Act (supra)*** is that court is vested with the discretion to grant interest at such rate as it deems reasonable. It is not in dispute that the plaintiff, and other beneficiaries of the estate of the late Elieza Zimbiha have, since the 1964 been

denied rent monies which would have accrued as income to them. Such loss calls for an award of interest.

In *Kananura Joseph & Or's v. Mbarara District Local Government & Or's*, (*supra*) cited by Counsel for the plaintiff, this court was seized of the issue; not of interest on *mesne* profits, but of the denial of income from the employment the parties would have been entitled to had their contracts not been terminated. The Court took into account such factors as the economic realities at the time as informed by the borrowing- lending bank rates, and the interest rate of 25% per annum was awarded.

In the instant case, however, my view is that the 25% rate would not be applicable to such a situation as where, since 1964, the Government took over the suit land and circumstances have since been quite versatile, and there is no evidence to suggest that such a commercial rate existed. For that reason the court rate of 8%; per annum is considered to be the appropriate applicable rate, and it is awarded, and shall be applicable on the amount of the *mesne* profits effective from the time the cause of action arose in 1964 until payment in full.

The other issue relates to general damages. Still relaying on the *Kananura Case (supra)* the plaintiff's Counsel argued that the defendant has been in use of the suit land while putting the plaintiff to great economic inconvenience. It is noted that this point was not contested by the defence either in evidence or in their Counsel's submissions. The settled position is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural and probable consequence of the defendant's act or omission. *See James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993;*

Erukan Kuwe v. Isaac Patrick Matovu & A'nor H.C.C.S. No. 177 of 2003 per Tuhaise J.

Secondly, in the assessment of the quantum of damages, courts have mainly been guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach. See ***Uganda Commercial Band v. Kigozi [2002] 1 EA. 305***. A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had she or he not suffered the wrong. See ***Charles Acire v. Myaana Engola, H.C.C.S No. 143 of 1993; Kibimba Rice Ltd. v. Umar Salim, S.C.C.A. No.17 of 1992***.

The critical deciding factor in the instant case is one that the defendant has been in occupation and use of the suit land for over forty-eight years without prior payment of compensation, which has put the plaintiff to great economic inconvenience, as was testified by PW1, Annet Zimbiha. This would call for the award of general damages fairly commensurate to the value of the loss and inconvenience suffered at the instance of the defendant. All the factors taken together, court considers Shs. 350, 0000, 0000/= (*Three hundred and fifty million only*) to be the appropriate general damages.

Concerning the issue of interest on the particular amount of compensation, Counsel for the plaintiff reiterated their earlier stance on interest as regards the *mesne* profits, and that the same interest rate of 25% per annum be applied to the order for compensation *mutatis mutandis*, from the date the cause of action arose till payment in full. There was again no response to this particular issue from the defendant.

The guiding principle is that interest is awarded at the discretion of court, *See Uganda Revenue Authority v. Stephen Mbosi(supra)* and that like all discretions it must be exercised judiciously taking into account all circumstances of the case. See *Liska Ltd.v.De Angelis[1969] E.A 6;National Pharmacy Ltd v. KCC [1979] HCB 256, Superior Construction & Engineering Ltd v. Notay Engineering Ltd. HCCS No. 24 of 1992.* Also, *Section 26 CPA (supra)* is to the effect that where interest was not prior agreed as between the parties court could award interest that is just and reasonable. See also *Mark Extraction Enterprises Ltd. v. M/s Nalongo Orphanage, H.C.C.S No. 04 of 1996.*

It is not in dispute as to whether interest should be awarded on the amount of compensation, but whether the rate of 25% per annum is just and reasonable. In my view, a just and reasonable rate would be one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. The plaintiff ought to be entitled to such a rate of interest which should not neglect the current economic value of money, and at the same time which should insulate the amount awarded against the vagaries due to inflation and depreciation of the currency.

With the in mind, the interest rate of 23% per annum is deemed just and reasonable. It is awarded on the amount of compensation component (i.e.; the value of bare land Shs. 3,000,000,000= *(Three billion)* and on the amount of the general damages Shs.350, 000,000= *(Three hundred fifty million)* and shall be applied from the date of judgment till payment in full.

On the issue of costs, the law under **Section 27(2) CPA (supra)** is that costs are awarded at the discretion of court and follow the event, unless for some reasons court directs otherwise. See **Jennifer Rwanyindo Aurelia & A'nor v. School Outfitters (U) Ltd., C.A.CA No.53 of 1999; National Pharmacy Ltd. v.Kampala City Council [1979] HCB25.** In the instant case, the plaintiff has succeeded on all the issues, and there is no compelling and justifiable reason to deny her the costs. The plaintiff is accordingly awarded costs of this suit.

**BASHAIJA K. ANDREW
JUDGE.
08/01/2013.**