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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)  
CIVIL SUIT NO. 025 OF 2016**

**CHRIS RUGARI ::: PLAINTIFF**

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**VERSUS**

**AMIN TEJAN ::: DEFENDANT**

**BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW**

**J U D G M E N T :..**

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Chris Rugari (*hereinafter referred to as the “plaintiff”*) filed this suit against the Amin Tejan (*hereinafter referred to as the “defendant”*) seeking a declaration that the defendant is a trespasser on property comprised in Plot 23 Kanjokya Street LRV 259 Folio 21 Kampala (*hereinafter referred to as the “suit property”*) an order for eviction and/or a warrant to give vacant possession against the defendant from the suit property, a permanent injunction  
20 restraining the defendant, his agents, workers and /or anyone claiming after the defendant from interfering with the plaintiff’s quiet enjoyment of the suit property or in any way dealing with the suit property, *mesne* profits, general damages, costs of the suit, and any other relief as the court may deem fit.

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Court issued summons for the defendant to file his defence on 25<sup>th</sup> January, 2016. According to the affidavit of service sworn by one Richard Kyambadde supplemented by one other sworn by Abbey Bazanye, the defendant was duly served on 27<sup>th</sup> January, 2016. However, he did not file any defence to the suit. On 12<sup>th</sup> February, 2016, the plaintiff applied for an interlocutory judgment which was entered in his favour on 15<sup>th</sup> February, 2016 pursuant to Order 9, r. 10 of the Civil Procedure Rules, and the suit to proceeded *ex parte* for formal proof.

30 **Background:**

Pursuant to Section 3 of the Assets of the Departed Asians, Cap 83, and Section 2 of the Expropriated Properties Act, Cap 87, the suit property was vested in the Government of Uganda under the management and control of the Departed Asians Property Custodian Board (DAPCB).

A departed Asian one Jiwani Fazali Dharamshi, who was the former owner, never physically or  
35 legally repossessed the suit property from the DAPCB. On 19<sup>th</sup> October, 2015, the plaintiff applied for to be allocated the suit property. On the 20<sup>th</sup> October, 2015, the DAPCB temporality allocated it to the plaintiff, who duly complied with all the terms and conditions of the allocation including payment of the reserved rent.

When the plaintiff sought to take possession of the suit property, he was resisted by the  
40 defendant who was and still is in current occupation. The plaintiff filed this suit contending that the defendant is trespasser on the suit property, and sought the reliefs enumerated above. The following issues were adopted for trial from the plaintiff's scheduling notes;

**1. Whether the defendant is a trespasser on the suit property.**

**2. Whether the plaintiff is entitled to the remedies prayed for.**

45 **Evidence:**

The plaintiff in this case adduced evidence of two witnesses. He personally testified as PW1 and stated that he deals in the business of real estate acquisition and development. Further, that he got to know about the suit property from the DAPCB as one of the properties which is under its management. That by a letter dated the 19<sup>th</sup> October, 2015; he applied for the allocation of the  
50 suit property. As proof of this the plaintiff attached to his trial bundle a certified true copy of the

application letter marked as *Exhibit P1*. This particular evidence was corroborated by PW2 whose evidence will later be summarized below.

PW1 further testified that he duly complied with the terms and conditions of the allocation which included payment of six months' rent in advance totaling to Ugx.1,600,000/=. Copy of the  
55 payment receipt was attached to the trial bundle as *Exhibit P3*. This particular evidence was also corroborated by PW2. PW1 stated that when he went to take possession of the suit property, he was violently resisted by the defendant who had no any colour of right to the suit property. PW1 contends that the actions of the defendant amount to trespass on the suit property and the defendant ought to be evicted.

60 PW2 Sam Sebuliba Male, the Acting Executive Secretary of the DAPCB, testified that DAPCB was established under Section 4 of the Assets of Departed Asians Act (supra). It has the power to manage properties and business acquired or otherwise expropriated during the military regime and vested in the Government of Uganda under the Expropriated Properties Act (supra). Further, that the suit property comprised in Kanjokya Street LRV 259 Folio 21 in Kampala is among the  
65 property still managed by the DAPCB. That at the time of expulsion of the departed Asians, in 1972, the suit property belonged to Jiwani Fazal Dharamshi and Mr. Shiraz Lakhani as tenants in common with equal shares.

Further, that on the 30<sup>th</sup> March, 1983, the said Jiwani Fazan Dharamshi as a former owner applied for repossession of the suit property. That his application was, however, rejected on the  
70 25<sup>th</sup> February, 1992, for failing to meet the requirements of the law as it lacked supporting documents. That as such, the suit property is still under the management and control of the DAPCB. PW2 tendered in court a certified true copy of the rejected repossession application which is also attached to the plaintiff's trial bundle as *Exhibit P4*.

PW2 maintained that the DAPCB has never allocated the suit property to the defendant. That  
75 consequently, the DAPCB is of the firm position that the defendant is illegally on the suit  
property as a mere trespasser who ought to be evicted.

***Resolution of the issues:***

***Issue No.1: Whether the defendant is a trespasser on the suit property.***

80 In the case of ***Justine Lutaaya vs. Stirling Civil Engineering Company Ltd, SCCA No. 11 of  
2002***, the Supreme Court held that trespass occurs when a person makes an unauthorized entry  
upon land of another and interferes with or portends to interfere with another person's lawful  
possession. A similar stance was adopted in the cases of ***Sheik Mohammed Lubowa vs. Kitara  
Enterprises Ltd., HCCA No. 4 of 1987*** that trespass to land is constituted where entry onto the  
85 land by the defendant was without the consent of the owner.

Section 3(1) of the Assets of Departed Asians' Act (supra) provided that;

***“Any assets declared by a departing Asian, including any property or business recorded  
in the register under Section 2, and any assets left behind by any Asian who failed to  
prove his or her citizenship at the time and in the manner specified by the Government  
90 shall without any further authority, vest in the Government.”***

Section 2(1) (a) of the Expropriated Properties Act, Cap 87 provides that;

***“Any property or business which was vested in the Government and transferred to the  
Departed Asians' Property Custodian Board under the Assets of Departed Asians Act  
shall, from the commencement of this Act, remain vested in the Government and be  
95 managed by the Ministry responsible for finance.”***

Section 2(4) of the Expropriated Properties Act (supra) provided that;

“Until such time as the Minister has exercised his or her powers under subsection (3), the Departed Asians’ Property Custodian Board established under Section 4 of the Assets of the Departed Asians Act shall continue to manage such properties and  
100 **business.”**

The plaintiff in the instant case pleaded acts of trespass against the defendant, under paragraph 6 of the plaint, which include the unlawfully taking of possession of an asset of a departed Asian without the authority of permission of the DAPCB; and the denying of the plaintiff entry and possession of the suit property despite the plaintiff having obtained a valid allocation of the suit  
105 property.

The testimony of PW2 which essentially corroborates that of PW1 is to the effect that the suit property is among those still under the management of the DAPCB, and that it never been allocated to the defendant, who the DAPCB considers a trespasser on the suit property, and who ought to be evicted.

110 Further, that on the 20<sup>th</sup> October, 2015, the suit property was allocated to the plaintiff, a matter that was well within the power of the DAPCB under Section 6 of the Assets of the Departed Asians Act (supra) to sell or deal with properties vested under it as it deems fit. In addition, PW1 stated that he was forcefully denied entry and possession of the suit property by the defendant after he had complied with the terms of the allocation.

115 On strength of the ***Justine Lutaaya vs. Stirling Civil Engineering Company Ltd***, case (supra) and the other cited cases (supra) it is evident that the defendant’s actions fit within the ambit of the definition of a trespasser on the suit property. He entered on to the suit property and remained there without the authority of the owner. The defendant has continued to stay there unlawfully. Even when the suit property was dealt with by the DAPCB by allocating it to the plaintiff, still

120 the defendant violently resisted the plaintiff from taking vacant possession. Therefore, Issue  
No.1 is resolved in the affirmative.

***Issue No.2: Whether the plaintiff is entitled to the remedies prayed for.***

The plaintiff prayed declaration that the defendant is a trespasser on the property. This is the  
finding of court under Issue No. 1 above hence the defendant is a trespasser on the suit property.

125 The plaintiff also prayed for an order of eviction against the defendant and/or a warrant to give  
vacant possession of suit property. One of the remedies available to an aggrieved party as a result  
of trespass is the eviction of the trespasser from the suit property. Accordingly, an order of  
eviction is issued against the defendant to be evicted from the suit property. In addition, an order  
of a permanent injunction is issued restraining the defendant, his agents, workers and anyone  
130 claiming under him from interfering with the plaintiff's quiet enjoyment of the suit property or in  
any way dealing with the suit property.

The plaintiff also prayed for *mesne* profits. Section 2(m) of the Civil Procedure Act (supra)  
defines *mesne* profits as;

135 ***“...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 vs. Emmanuel Wambedde Others HCCS No. 459 of  
1998*** Mukiibi J. held, and correctly so in my view, that;

140 ***“It is settled that wrongful possession of the defendant is the very essence of a claim for  
mesne profits. See: Paul Kalule vs. Losira Nonozzi [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'.*”

145 In *Elliott vs. Boynton [1924] 1 Ch. 236 (C.A)* Warrington, LJ, 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.”*

In *Clifton Securities Ltd. vs. Huntley & Others [1948] 2 All E.R 283* at page 284, Denning J, raised and answered the question as follows;

150 *“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.”*

Applying the above principles to the instant case, no evidence was adduced by the plaintiff upon  
155 which this court could base the award of *mesne* profits or even assess the same. It is not known what the value of the premises was at the time. The plaintiff did not plead what could have been the annual value of the suit property. Without such averments and evidence proving there is no basis for awarding *mesne* profits to the plaintiff.

The plaintiff also prayed for general damages. The position of the law in *Justine Lutaaya vs. Stirling Civil Engineering Company Ltd*, (supra) is that trespass is actionable per se even  
160 without proof of damages, but where damage has been occasioned to the plaintiff he is entitled to the award of damages assessed on the basis of the loss or injury he or she has suffered. It is also held in *James Fredrick Nsubuga vs. Attorney General, HCCS No. 13 of 1993* that the award of general damages is in the discretion of court and is always as the law will presume to  
165 be the natural and probable consequence of the defendant’s acts or omission. 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: ***Kibimba Rice Ltd. v. Umar Salim, SCCA No.17 of 1992.***

170 In the instant case, there is no doubt that the plaintiff was subjected to economic loss by the defendant's actions of refusing to deliver up vacant possession of the suit property. The plaintiff led evidence showing that he deals in the business of real estate development. Therefore, to deny him use of the property from the time he was allocated the same to date entitles him to the award of general damages.

175 In ***Uganda Commercial Band vs. Kigozi [2002] 1 EA. 305*** it was held that in the assessment of the quantum of damages, courts are mainly to be guided by the value of the subject matter, the economic inconvenience a party has suffered at the instance of the defaulting party, and the nature and extent of the loss.

180 In the circumstances of the instant case, and particularly taking into account the critical economic factor as the guiding factor, the plaintiff is awarded general damages of UGX 100 million. It shall attract interest at a rate of 25% per annum from the date of this judgment till payment in full.

The plaintiff prayed for the award of costs of this suit. Section 27(2) CPA (supra) is to the effect that costs are awarded at the discretion of court and follow the event, unless for some reasons court directs otherwise. See: ***Jennifer Rwanyindo Aurelia & Another vs. School Outfitters (U) Ltd., CACA No.53 of 1999.*** The plaintiff herein has succeeded in his claim. He is awarded costs of the suit.

**BASHAIJA K. ANDREW**



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**JUDGE.**  
**19/12/2016.**

Mr. Mugabi Ivan Bakesiga Counsel for the plaintiff present.

195 Plaintiff absent.

Mr. Godfrey Tumwikirize Court Clerk present.

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Court: Judgment read in open court.

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**BASHAIJA K. ANDREW**  
**JUDGE.**  
**19/12/2016.**