

**THE REPUBLIC OF UGANDA\**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)**

**CIVIL SUIT NO. 131 OF 2011**

**HARUNA MULANGWA: ::: PLAINTIFF**

**VERSUS**

**KAGUJJE FULUGENSIO: :::DEFENDANT**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

The Plaintiff sued the Defendant for trespass on his land comprised in Kibuga Block 12 Plot 849 and Plot 846. The Plaintiff claimed that the Defendant constructed a perimeter wall on part of his land and dug a foundation trench on it. Copies of the certificates of title to prove his ownership of the land were attached to the plaint.

The Defendant denied the claims against him and contended that he was in occupation of his land Kibuga block 12 plots 344 and 1610 together with the two plots of kibanja that he bought from Nalukiiko Mastulah, Edirisa Senzira and Nakitto Fatuma.

At the point of filing conference notes, the Defendant in his conferencing notes filed on 12<sup>th</sup> April 2012, mentioned that he had vacated the suit premises and sought a refund of the purchase price for the kibanja he bought from Edirisa Senzira and Nakitto Fatumah. When the matter came up for hearing on 13<sup>th</sup> April 2012, Counsel for the Defendant indeed confirmed that the Defendant vacated the Plaintiff's premises, upon which he sought a refund of the purchase price and handed over the kibanja to the original owners who had sold it to him. Counsel prayed for

judgment to be entered in favour of the Plaintiff or that they would file a consent decree. The consent decree was however never filed.

Consequently, when the case came up again for hearing on 2<sup>nd</sup> May 2012, Counsel for the Plaintiff prayed to have the defense struck out and Judgment entered for the Plaintiff, or in the alternative to be allowed by Court to file a formal application to have the defense struck out. Court allowed the Plaintiff to file a formal application and the Plaintiff filed Miscellaneous Application No. 414 of 2012 seeking to have;

1. An interlocutory Judgment entered on admission without waiting for the determination of any other question between the parties.
2. Alternatively, the Defendant's written statement of defence is struck out on grounds that it discloses no reasonable answer to the Plaintiff's claim and judgment entered.
3. Costs of the application.

The application was heard and Court granted the orders and struck out the defense of the Defendant under Order 6 Rule 30 of the Civil Procedure Rules.

Judgment was entered for the Plaintiff on 19<sup>th</sup> September 2013 in the following terms and orders;

1. *The suit land belongs to the Plaintiff and is entitled to immediate vacant possession of the suit land.*
2. *The Defendant's actions of constructing illegal structures on the Plaintiff's suit land were tortuous and amounted to trespass by the Defendant.*
3. *An order for the demolition of the Defendant's illegal structures on the Plaintiff's suit land within seven (seven) days from the date of this judgment is granted.*
4. *A permanent injunction restraining the Defendant, his agents, servants or any other party claiming interest in the suit land and the party allegedly having been given the suit land by the Defendant during the pendency of this suit to wit; Nalukiiko Mastulah, Edirisa*

*Senzira and Nakitto Fatuma, from interfering with the Plaintiff's ownership and possession of the suit land is granted.*

5. *If the Plaintiff so wishes, shall set down for the hearing the issue of general damages.*

6. *The Plaintiff is awarded costs of Miscellaneous Application No. 414 of 2012 and the main suit HCCS No. 131 of 2011.*

Pursuant to number 5 above, of the terms of the judgment, the matter was set down for hearing the claim for general damages. On 18<sup>th</sup> April 2017, the Plaintiff appeared in Court and led evidence as PW1. He testified that he was 82 years of age and a retired businessman. The Defendant started using his land without his consent on 4<sup>th</sup> October 2010. He reported to police and LCs but they did not help and in 2010, he decided to file this suit. He stated that the Defendant built on his land and put up a fence. He was to demolish the structures but he refused and only moved the fence.

The Plaintiff went on to testify that the Defendant kept on threatening him yet he was a hypertensive patient and that his pressure has always been high because of the threats. He further prayed for general damages worth shs. 100,000,000/- million (*one hundred million*) for the inconvenience he had suffered by the Defendant using his land. He admitted in evidence certificates of title to prove ownership of the suit land.

Counsel for the Plaintiff made oral submissions and he prayed that the Plaintiff is awarded the general damages as prayed in the plaint. Counsel cited the case of ***Ronald Kasibante versus Shell Uganda Ltd. HCCS NO. 549 of 2006*** reported in Uganda Law Reports 2008 a page 690 for holding that;

*'general damages consist of items of normal loss which a party is not required to specify in his pleadings to permit proof. These damages are presumed by law to arise naturally in the normal course of things, Court may award them where it cannot measure by which they are assessed, except the opinion and judgment of a reasonable person'.*

This case was assigned to me at this point. I note from the record of proceedings that the Defendant never filed an affidavit in reply to Miscellaneous Application No. 414 of 2012. I also note to that even, in the proceedings to determine the Plaintiff's claim for general damages, neither the Defendant nor his Counsel participated. The matter was *ex parte*.

Nonetheless, whether a suit proceeds *ex-parte* or not, the burden of the party filing the suit to prove his/her case to the requisite standards remains. Ref; *Yoswa Kityo versus Eriya Kaddu [1982] HCB 58.*

In the case of *Placid Weli versus Hippo Tours & 2 Ors; HCCS NO. 939 of 1996, quoting Halsbury's Law England 3<sup>rd</sup> Edn. Vol. 38, paragraph 1222,* it was held that;

*'trespass is actionable perse even if no damage is done to the land. That a Plaintiff is entitled to recover damages even though he has suffered no actual loss but if trespass has occasioned the loss, the Plaintiff is entitled to receive such an amount as will compensate him or her for the loss'.*

General damages are defined in *Black's Law Dictionary 9<sup>th</sup> Edn. At page 446,* defines damages that the law presumes, follow from the type of wrong complained of. They do not need to be specifically claimed.

In this case, it was the Plaintiff's undisputed evidence that the Defendant kept on threatening him and as a result, his pressure has always been high. He also led evidence that the Defendant removed his fence from his land, but he had not demolished the room, which is used as a bar.

The Plaintiff is an 82 year's old retired businessman. I believe he has suffered great inconvenience from the time the Defendant encroached on his land. The Plaintiff testified that if he was using the land, he would have earned about shs.100,000,000/- million (*one hundred million*) from the room he uses as a bar. The Plaintiff however never adduced any evidence to prove the fact that the Defendant earns shs. 1,000,000/- (*one million*) from the room he uses as a

bar which is on his land. It is also my considered view that the shs. 100,000,000/- (*one hundred million*) as compensation sought by the Plaintiff, is extravagantly high. The Defendant realized that he was in trespass and took a step forward to vacate his fence from the Plaintiff's land.

Considering the circumstances of this case and in my view, an award of shs. 20,000,000/- (*twenty million only*) as compensation in general damages is sufficient.

The Plaintiff is accordingly awarded shs. 20,000,000/- (*twenty million only*) as general damages and costs are also granted. The Judgment is entered for the Plaintiff in terms as above stated.

I so order.

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Henry I. Kawesa

JUDGE

22/11/2017