THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL APPEAL NO. 082 OF 2020

(Appeal from the judgment of Chief Magistrate Mengo Court, His Worship Mushabe Alex Karocho delivered on 15th October 2020 vide Mengo Chief Magistrate Court Civil Suit No. 53 of 2013).

1. MEMBER INVESTMENTS LTD

2. DODOVIKO MWANJE :: APPELLANTS

Versus

1. TEDDY NANYUNJA
2. NABATANZI FLORENCE

3. KABAKA OF BUGANDA:: RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya

JUDGMENT:

Introduction:

The 1st and 2nd respondent filed ***Civil Suit No. 53 of 2013*** at Mengo Chief Magistrate's Court, claiming to be the owners of a portion of land, having acquired the same from the estate of their late father, Bemba which the current appellant/defendants were and are still using to access their land, comprised in ***Kibuga Block 18 Plot 391.***

The 1st and 2nd respondents/plaintiffs sought a declaration that they were the owners of the same land and such entitled to an eviction order and general damages against the appellants.

The appellants/defendants denied the 1st and 2nd respondents/plaintiff claims and contended that at the time of filing the suit, the 1st and 2nd respondents/plaintiffs did not have any certificate of title to the same land, save

for their claims that the same portion of the disputed land was registered on ***Kyadondo Block 7 Plot 1028***.

That at all the material time since 1976 or there about, the appellants/defendants and their predecessors in title have been in occupation and use of the disputed area of the suit land, using it as both parking yard and access to the developments on ***Kibuga Block 18 Plot 391;*** and that the same was part of the approved plan by the Kampala City Council in 1976 for the developments on ***Kibuga Block 18 Plot 391.***

The appellants/defendants filed a counter claim for a declaration that the counter defendants/ plaintiffs' claims over the suit land were fraudulent; a declaration that the counter claimants were/are the rightful owners of the disputed plot as either lawful or *bonafide* occupants; general damages and cost of the counter claim.

They further claimed that sometime in 2015 during the subsistence of the suit, without the respondent's/defendants' knowledge and or consent, the 1st and 2nd respondent/plaintiffs' obtained a certificate of title to the suit land in form of a lease from the 3rd respondent.

Consequently, the appellants/defendants amended the counter claim to include the 3rd respondent for purportedly issuing a lease over the suit property to the 1st and 2nd respondents/plaintiffs when the case was in court; and over land which had/has a mailo certificate of title in ***Kibuga Block 7 Plot 1028*** in the names of Henry Sebunya at Lubaga.

The appellants/counter defendants further contended that even if the 3rd respondent was the owner of the same land, he was obliged under the law not to enter into any transaction with the 1st and 2nd respondents/plaintiffs without the consent and knowledge of the appellants/counter claimants who were in possession and occupation of the same land.

The respondents denied any wrong doing and in particular, the 3rd respondent contended that the suit land was part of properties under the official estate in urban areas returned to him by the central government.

The 1st respondent subsequently commenced the process of applying for a lease from Kampala City Council (then) which was granted. She was allowed to fence off the suit land in a bid to develop the same but was interrupted by the 1st appellant, who is the 1st appellant's Managing Director.

It was the respondent's claim that the 2nd appellant was relying on a letter from the then Kampala City Council which upon close scrutiny was found to be a forgery and thus challenged.

That the appellants have their land comprised in ***Kibuga Block 18, Plot 391*** which has a distinct title and access road. However, that they sought to claim a portion outside that, claiming to be *bonafide* occupants and grabbed another portion purportedly to create access to Masaka Road, using a building plan purportedly approved in1976 but which was not in the appellants' names.

Decision by the trial court:

After hearing the case, the trial Magistrate ruled in favour of the respondents, holding that the suit land is lawfully and rightfully comprised in ***Kibuga Block 17 Plot 1028, Land at Rubaga;*** and that the same belongs to the respondents who were entitled to evict the appellants.

The counter claim was thus dismissed and general damages of ***Ugx. 5,000,000/=*** awarded to 1st and respondents with costs of the suit and counterclaim to the respondents.

Being dissatisfied with the decision and judgment of the lower court, the appellants appealed to this court raising eight (8) grounds of appeal to wit:

1. ***The Trial Chief Magistrate erred in law and in fact when he failed to properly evaluate the evidence as a whole thereby coming to a wrong conclusion that the suit land belonged to the 1st and 2nd respondents***

and the appellants were trespassers on the suit land comprised in Kibuga Block 17 Plot 1028 land at Natete.

2. ***The learned Trial Magistrate erred in law and in fact when he failed to hold that the suit land was public land always used as parking and access road for the appellants to access land comprised in Kibuga Block 18 Plot 391 and thereby coming to a wrong conclusion that prejudiced the appellants and their predecessors in title.***

3. ***The learned Trial magistrate erred in law and in fact when he failed to properly evaluate the evidence as a whole and came to a wrong conclusion that the suit land was Kibuga Block 17 Plot 1028 whereas not.***

4. ***The Learned Trial Magistrate erred in law and in fact when he held that the lease granted by the 3rd respondent to the 1st and 2nd respondent over the suit land was lawful/legal and not fraudulent thereby coming to a wrong conclusion.***

5. ***The Learned Chief Magistrate erred in law and in fact when he awarded excessive general damages of UGX 5,000,000/- to the 1st and 2nd respondent without any legal basis/jurisdiction.***

6. ***The Learned Trial Magistrate erred in law and in fact when he awarded costs to the respondent.***

<u>The duty of the appellate court:</u>

The duty of this court as an appellate court is to re-evaluate the evidence on record and arrive at its own independent conclusion, keeping in mind that it did not have the opportunity to study the demeanor of the witnesses in the trial court. ***(See:Henry Kifamunte Vs Uganda, Criminal Appeal No. 10/97); Tibarumu Vs Bangumya (Civil Appeal No. 70 of 1971) [1975] EACA).***

Under ***section 101 and 102 of the Evidence Act Cap 6,*** the burden of proof in civil cases lies on the party who alleges to prove his/her case on the balance of probabilities.

Resolution of Grounds 1 to 5:

The law:

In ***Justine E.M.N. Lutaaya Vs Striling Civil Engineering Company Civil Appeal No. 11 of 2002 (SC),*** it has been declared that trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes, or portends to interfere, with another person's lawful possession of that land.

Needless to say, the tort of trespass to land is committed, not against the land, but against the person who is in actual or constructive possession of the land at common law, the cardinal rule is that only a person in possession of the land has capacity to sue in trespass.

It is not in dispute in this case that the 1st and 2nd respondents are neighbours to the appellants, sharing a common boundary; that the appellants own plot ***Kibuga Block 18, plot 391*** with its neighboring ***plot 1028, block 17*** bearing a lease in the names of the respondents, acquired by them in 2015, during the pendency of this suit.

As stated in ***Tayebwa Geoffrey & Anor vs Kagimu Ngudde Mustafa HCCS No. 118 of 2012,*** for one to claim an interest in land, must show that he or she acquired an interest or title from someone who previously had an interest or title thereon.

It is also trite law that a certificate of title is conclusive evidence of ownership, save where there is fraud. (Ref: ***sections 59 and 176 of the RTA).***

The provisions of ***section 35(8) of the Land Act*** are clear that any change of ownership does not in any way affect the existing lawful interests. The new owner is under obligation to respect any existing interest.

The two sides in this case in their respective pleadings claimed that fraud was committed by the other. Where fraud is alluded to in any transfer as in this case,

for court to vitiate any transaction, the party alleging fraud is required to show that the acts complained about constituting fraud were committed by or with the involvement of the transferee, or can be traced back to him/her.

Fraud" as defined in ***FJ K Zaabwe vs. Orient Bank & 5 O'rs SCCA No. 4 of 2006 (at page 28)*** is an intentional perversion of truth for purposes of inducing another to part with some valuable thing belonging to him/her, or to surrender a legal right.

It is also defined as a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

It is anything calculated to deceive, whether by a single act of combination or by suppression of truth or suggestion of what is false, whether it is by direct falsehood or innuendo by speech or silence, word of mouth or look or gesture amounts to fraud.

Fraud unravels everything and vitiates all transactions. (***Fam International Ltd and Ahmad Farah vs Mohamed El Fith [1994] KARL 307).*** It must therefore be specifically pleaded and proved.

In any allegation of fraud, the standard is heavier than on a mere balance of probabilities as generally applied in civil matters. ***(Kampala Bottlers Ltd. Vs Damaniaco (U) Ltd (supra)).***

Analysis of the evidence:

In alignment with the above principles, in *paragraphs 3-8* of the respective witness statements of ***Pw1 and Pw2,*** the plaintiffs stated that they inherited the suit land from their parents and that they were using the same land for cultivation until 1985 before they built more structures on the suit land. According to ***PW2,*** the disputed land is about *130feet by 100 feet.*

Pw2 acknowledged the existence of an approved building plan for the structures on ***Kibuga Block 18, plot 391***, with an approved access to the same constituting the suit land which plot has as established during locus.

The appellants on their part claimed that they traced their title, occupation, usage and interest in the suit property from the late Sulaiman Sengendo in 1976.

That together with their predecessors in title they have occupied, utilized and used the disputed portion of the suit land as both access and parking yard for the user of ***Kibuga Block 18 Plot 391,*** since the 1970s.

That the disputed portion of the suit land has been occupied, held and utilized as unregistered land by the defendants until 2015 when the respondents got the impugned title, vide ***exhibit P12.***

That they are qualified in law to be tenants by occupancy and the equities and rights of a tenant by occupancy were guaranteed by ***Articles 26 and 237 of the Constitution of Uganda*** as well as ***sections 29 and 31 of the Land Act.***

That the respondents who have never occupied or utilized the suit land could not have held any interest in the suit land and their claims of inheritance over the same land were not backed by any evidence.

At the scheduling the following issues were agreed upon:

1. ***Whether the certificate of title for Kyadondo Block 17 plot 1028 issued in the names of the 1st and 2nd plaintiffs/counter defendants under the lease granted by the 3rd defendant was issued and/or obtained illegally/unlawfully It and/or fraudulently.***
2. ***Who of the parties owns the suit land.***
3. ***What remedies are available to the parties.***

I will consider the respective grounds of appeal under the following separate subtitles:

a. Whether the 3rd respondent was the rightful lessor of the land in dispute:

The dispute as I understand it mainly rotates around the ownership of the area in dispute and the question of the controlling authority at the time the lease was granted to the respondents by the 3rd respondent, the Kabaka of Buganda.

The 3rd respondent pleaded during the hearing that the suit was bad in law, misconceived and did not disclosed a cause of action against him. That he was the traditional ruler of Buganda Kingdom, with authority to manage all the official estate of the kingdom including the one on ***Kibuga Block 17 plot 1028.***

The plaintiffs/respondents relied on the evidence of three witnesses. Nabatanzi Florence testified as ***Pw1. Pw2***, was Teddy Nanyunja and ***Pw3,*** Adam Kasozi.

For the 1st and 2nd defendants/appellants, Lodoviko Mwanje testified as ***Dw1*** while Kizito Bashir Juma testified as ***CDW1***, on behalf of the 3rd counter defendant.

They claimed that the disputed land was public land over which KCCA now has control and that the 3rd respondent had no right to issue the lease to the respondents as it did in 2015.

It is not in dispute that the controversy is about a portion of the land taken up in the title acquired by the respondents in 2015 which the appellants claim to have been using as an access route to ***Kibuga Block 18 Plot 391,*** and parking area by the appellants.

The trial court at *page 4* of its judgment concluded that the lease over the land comprised in ***block 17 plot 1028*** had been granted within the confines of the law.

Furthermore, that the defendants did not adduce any evidence to prove that the disputed land was public land; and that the defendants' predecessors were using if for the purpose they claimed it was; that it could have been used for the same but that did not automatically mean they were entitled to take over the land.

Therefore, if the 3rd counter defendant/respondent grants a lease over land that was returned to him by Government, the *status quo* changed and according to court therefore, the lease was lawfully granted to the plaintiffs.

Thus in light of the changes in ownership, the evidence of a building plan heavily relied on by the defendants/respondent did not help to support the defendants/appellants' case.

According to court therefore, the evidence adduced by the 3rd counter defendant/respondent was enough to prove the basis upon which he claimed the suit land; and thus possessed every right to deal with the land as the rightful owner, as guaranteed under ***article 26 of the Constitution of Uganda.***

In his evidence ***CDW1*** Kizito Bashir however confirmed that the 3rd respondent which issued the lease did not have a mailo title out of which the purported lease was created.

He further confirmed that the survey of the suit land was first done in 1996 by KCC at the time, which was the controlling authority, upon the request of the 1st and 2nd respondents.

That there was however a technical problem on the land which was being investigated, as the land of the respondents is located in Natete, Masaka road while that of the appellants is located in Lubaga, much as the two were neighbouring plots.

The 3rd respondent on its part claimed ownership of the suit land as one of those properties returned to the Kabaka under the ***Traditional Rulers (Restitution of the Assets and Properties), 1993,*** now ***Cap. 247,*** a claim which was however not proved.

CDW1 in his testimony told court that he was aware that land described as and comprised in ***Kibuga Block 17 Plot 1028*** existed at Lubaga in the names of Henry Sebunya and it was his evidence that the 3rd respondent had received a letter from the Commissioner Land Registration demanding to know which documents the 3rd respondent relied on to claim title to the suit land.

However, those documents were neither produced in court nor submitted to the Commissioner Land Registration. He also confirmed this was land in the same locality and that the title purportedly issued to the 1st and 2nd respondent had a technical problem.

Evidence on record further indicates that KCCA and Kampala District Land Board had declined to grant a lease to the 1st and 2nd respondent on the basis that the land was not available for leasing.

This court's attention was also drawn to a search certificate dated 6th May, 2016 for the land comprised in ***Kibuga Block 17 plot 1028, land at Rubaga,*** indicating that there was already a registered owner of that land. This was entered on the mailo register, with the names of Henry Sebunya of Rubaga appearing on the certificate.

The said registration had been made as early as 25th July, 1997, under ***Instrument No. KLA 189685.*** There is no evidence on record to prove that the said certificate of title was recalled/cancelled.

In addition, a caveat had been lodged on that land by one Rose Nabateregga Mukiibi on 11th August, 2011 under ***Inst No. 511799.*** Mukiibi's specific interest in the land was however not disclosed to court.

A careful examination of the certificate of title over which a lease of 49 years had been granted in the respondents' joint names on 14th September, 2015 ***(PExh 12)***, indicates the exact measurements as that appearing in the search statement for the land in which Sebunya's names were registered, eliminating doubt in my

mind that this was the same portion and location of land, over which two different titles were issued to two different persons, at different times.

There is neither evidence of sale or transfer of the suit land from Sebunya to the respondents and none as required to prove that the caveat lodged by another interested party was vacated, if at all it was; or whether or not Mukiibi the caveator was ever notified about its removal or of the transfer (or intention to transfer) the land to the respondents.

By virtue of ***section 139 of the Registration of Titles Act, Cap. 230,*** no registration of any person as transferee or proprietor or of any instrument affecting the estate or interest can take place once a caveat is lodged, until after notice of the intended registration or dealing is given to the caveator.

The relationship between the respondents and the Sebunya on the one hand and the respondents and the caveator, Rose Nabateregga Mukiibi on the other hand was not explained to court.

Under those circumstances, court is left wondering as to how the land registered in 1997 as mailo in the names of Sebunya, a nonparty to this suit, could have been leased in 2015 to the respondents as ***LRV 4553, Folio 2, plot No. 1028, block 17, at Nateete***, by the 3rd respondent which was not the controlling authority.

The prior registration of the land can only mean that the land which the respondents claimed as an inheritance following the death of their father had long ceased to be part of the estate of the 1st and 2nd respondents' father, as early as 1997.

Thus one would have expected that before filing this suit against the appellants, the respondents' family ought to have instituted an action to challenge the caveat and the earlier registration of Sebunya on the same land which they claimed as their inheritance; or in the alternative, seek amicable settlement out of court all the outstanding issues concerning this land.

The findings above also prove that this was not public land as claimed by the appellants or land which pass on as land belonging to the appellants, without consent of Sebunya as the registered owner. As duly noted, neither the caveator in this case nor Henry Sebunya who was the registered proprietor at the time were made parties to the present suit.

The decision by the trial court to condemn unheard not only the two but the appellants as well who claimed to have over the years used the disputed land as the only available access to their plot, was in violation of the rules of natural justice, with specific reference to the right to a fair hearing, ***(article 28 of the Constitution).***

As rightly acknowledged in the testimony of ***CWD1,*** two titles could not co-exist over the same plot of land, and I could not agree more.

A court ought not to allow itself to be made an instrument of enforcing obligations alleged to arise out of a transaction which is obviously, illegal if such illegality is duly brought to the attention of court. (***May vs Brown Doering MC NAB & Co. (1882) 2QB 728*** cited with approval in ***Kyagulanyi Coffee Ltd vs Francis Senabulya CACA No. 41 of 2006.).***

Halsbury and Martin Modern Equity (Sweet and Maxwell) Ltd 1977, observes that prior interest in land can only be defeated if it is not known by, or brought to attention of subsequent owner. Then the equities are equal and the estate prevails.

However, where there is notice thereof and the transferee acquires a legal estate, then the first in time would prevail since the interests rank in the order of creation.

The respondents no doubt had constructive knowledge of Sebunya's already existing registered interest over the same land. All factors aside, his unchallenged title would have therefore remained superior to that of the 1st and 2nd respondents.

The trial court therefore erred in law in ignoring the above key principles.

b. Was the land therefore available for leasing to the respondents in 2015?

In ***Suleiman Adrisi v Rashida Abul Karim Halani & Anor Civil Suit No. 008 of 2017*** court observed that land is only available for leasing when it is:

i) vacant and there are no conflicting claims to it;

ii) occupied by the applicant and there are no adverse claims to that occupation;

iii) where the applicant is not in occupation but has a superior equitable claim to that of the occupant; or

where the applicant is not in occupation but the occupant has no objection to the application.

This court has already noted that at the time of filing the suit, the respondents never had a certificate of title to the same land. As per evidence led by ***Dw1,*** the land comprised in ***Kibuga Block 17 Plot 1028*** existed under private mailo situate at Lubaga under the proprietorship of Henry Sebunya, as confirmed by Kampala City Council, vide ***Exhibit D.6,*** the certificate of title and search certificates vide ***exhibits D7, D8, D9 and D15,*** (all attached to the said witness's statement).

There is also uncontroverted evidence that as early as 2008 when the 1st and 2nd respondents attempted to fence off the suit property after obtaining permission from KCC on 22nd May, 2008 vide ***exhibit D3,*** the appellants raised a complaint with KCC vide ***exhibit D4*** and indeed KCC promptly responded by revoking the permission, vide ***exhibit D5.***

The respondents did not avail court with any such proof that the correspondence by KCC revoking the permission was forged by the appellants.

KCC observed that the permission had been granted over ***Kibuga Block 17 Plot 1028,*** a piece of land at Lubaga. When tasked to avail with proof of ownership over the same land, the respondents had initially failed to do so, since they had none.

KCC confirmed vide ***exhibit D.6*** that the disputed land was part of the approved plan for the user of ***Kibuga Block 18 Plot 391*** as both access and parking yard and that the same plan was approved in 1976 as evident from ***exhibit D2.***

As admitted by ***Pw2*** during cross examination, when she cross checked with KCC she found that indeed the approved plan for the developments on ***Kibuga Block 18 Plot 391 vide exhibit D.2*** existed with an access road as indicated thereon.

Even if one were to consider that the 3rd respondent was the owning authority on this land, still certain key elements had to be considered first. The intending lessor had to satisfy itself first that there were no prior or conflicting interests on that land; and that it was available for leasing.

Whereas it was not in doubt that the 3rd respondent had the right to issue leases, it could only do so on land which rightfully belonged to its estate; which was vacant; land over which there were no disputes; and could only do so upon satisfying itself that there were no adverse interests/claims thereon.

The 3rd respondent in that respect failed in the fulfilment of the duty to do so. The trial magistrate failed to take the above into consideration.

c.Creation of title during the subsistence of the suit:

It was the appellants' claim that the trial court ignored the fact that the respondents lay claim on the portion of the disputed land claiming that the same is comprised in ***Kibuga Block 17 Plot 1028***. A portion of that land was the subject of dispute in this suit. Furthermore, that the title for the respondents was created during the subsistence of the suit and without any notification to the appellants.

Counsel cited the case of ***Kayabura Enock & 2 others vs Joash Kahangirwe, Court of Appeal in C.A No. 88/2015*** where similar to the present case, the suit was still pending before the Chief Magistrate's court in Mbarara. The respondent in that case had processed and obtained a certificate of title over a big chunk of land, inclusive of the suit land.

Court held that failure to hear the defendants on the question of issuing a certificate of title to the property which they claimed to own as family property when the dispute was pending in court between the parties violated their right to hearing.

In the submissions by counsel for the respondents in the instant appeal, the explanation offered by the respondents were that it was during the pendency of the suit that the 3rd respondent's land was returned to it by the Government of Uganda, upon which it issued a lease to the respondents; and that is when the appellants amended their pleadings to challenge the said title; and that unlike in the case as cited, the matter had been adjudicated upon by the trial court.

The trial court seemed to have ignored the absurdity, the serious implications and perception where a party appearing before it seeking justice, obtains the lease over the land in dispute even before the question of ownership is concluded.

With all due respect, the only conclusion one could find plausible is that the objective behind such a move was to preempt court's decision as indeed happened, and defeat the appellants' interest in the land.

In ***Katarikawe vs Katwiremu (9177) HCB 188*** it was held that although mere knowledge of unregistered interest cannot be imputed as fraud, where such knowledge is accompanied by a wrongful intention to defeat existing interests, that would amount to fraud.

The respondents in this case were fully aware of the appellants' long existing albeit unresolved claims on this land. The evidence of fraud and illegality in the

counter claim led through the testimony of ***Dw1*** was not challenged and/or discredited during cross examination.

That also goes to prove the position which the trial court never considered that around the time the lease was granted to the respondents the land there were adverse claims, failed efforts to resolve the dispute, other goings on and conflicts concerning ownership of the land, which was the reason the suit was filed in the first place. The above removes any doubt that the respondents had acted in good faith.

Even worse for the respondents, this was caveated land, and already registered in the names of a third party to the suit. The argument therefore that the title was processed over land owned and occupied by the respondents, did not hold any water.

Had the learned trial magistrate properly evaluated the evidence on the record and subjected it to proper scrutiny of the law, he would have arrived at a different conclusion.

The appellants were therefore wrongfully denied appropriate reliefs by the trial court against the consequences occasioned to them through the wrongful acts by the respondents, which therefore also justified an order for cancellation of the lease on the land comprised in ***LRV 4553 Folio 2 Kibuga Block 17 Plot 1028.***

Available remedies:

The appellants in the counter claim prayed for several reliefs which were rejected by the trial court when it dismissed the counter claim. Among the prayers sought were cancellation of the certificate of title/lease; issue of a permanent injunction; general and punitive damages.

The appellants in addition also requested to visit the locus to establish what was on the ground. However, upon serious reflection by this court on the nature of the dispute, it would be more helpful to involve the district/city staff surveyor in the opening of the boundaries.

The 2nd appellant in this case claimed that charges have always been preferred against him; that he has been summoned to police without any justifiable cause as evident and that such conduct has caused a lot of suffering to the appellants and in respect to which they deserved an award of punitive damages.

General damages

These consist of items of normal loss which a party is not required to specify in his pleading to permit proof.

These damages are presumed by law to arise naturally in the normal course of things. The award of general damages lies within the discretion of court.

Court may award general damages where it cannot measure the way in which they are assessed, except the opinion and judgment of a reasonable person. ***(See Ronald Kasibante vs SHELL (U) LTD [2008] HCB, at 163).***

These may accrue as a consequence due to loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. 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 not suffered the wrong.

Thus as stated in ***Robert Caussens v Attorney General SCCA No.8 of 1999*** it was pointed out clearly that the object of the award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered.

In the assessment of the quantum of damages courts are mainly guided by the value of the subject matter, the economic inconvenience that the party was put through at the instance of the opposite party and the nature and extent of the breach. ***(Uganda Commercial Bank V Kigozi [2002]) 1 EA 305.***

The plaintiff may not prove that he/she suffered general damages, it is enough if he/she shows that the defendant owed him duty of care which he/she

breached. ***(See: Kalemera & Others vs UNILIVER (U) LTD & Anor [2008] HCB 134 at 136).***

It was the appellants' counter claim in this case that through the respondents' acts they were denied quiet possession of the suit land since 2008 and the 1st and 2nd respondents have continuously tried to block the appellants' access to ***Plot 391 Block 18*** by attempting to fence it off.

The appellants also sought to recover general damages for trespass and the inconvenience suffered and prayed for ***Ugx. 40,000,000/=*** from each of the counter defendants/respondents in the lower court which according to them was unjustifiably denied, which sum was however found by this court to be rather on the high side.

Court however acknowledges from the above findings that the appellants' interests were unduly affected by the wrongful actions of the respondents and are therefore awarded by this court, in exercise of its inherent discretion, a total sum of ***Ugx 15,000,000/=*** as punitive damages; and ***Ugx 30,000,000/-*** as general damages.

In the premises, the appeal succeeds. The judgment of the lower court is therefore set aside; and the following orders accordingly granted by this court:

1. ***The trial court erred in law and fact when failed to relate the evidence on record with the law and dismissed the counterclaim against the respondents;***

2. ***The respondents have no protectable interest in the land comprised in plot No. 1028 block 18 already registered in the names of Henry Sebunya and whose registration remained unchallenged and who was neither involved in the grant of the lease over the land nor made party to the suit.;***

3. ***The certificate of title/ lease created in the joint names of the 1st and 2nd respondents in the land comprised in LRV 4553, Folio 2, plot No. 1028, block 17, at Nateete is hereby cancelled on the ground that it was fraudulently granted to the respondents as neither the appellants who were in physical occupation of the land and Henry Sebunya, who had the unchallenged registered interest on the suit land were ever involved in the process of granting the lease;***

4. ***Punitive damages of Ugx 15,000,000/= are awarded to the appellants, to be jointly paid by the respondents.***

5. ***Damages of Ugx 30,000,000/= awarded to be jointly paid by the respondents;***

6. ***The orders in 4 and 5 above shall each attract interest of 15% payable per annum, from the date of delivery of this judgment, till payment in full.***

7. ***A permanent injunction issues to restrain the respondents, their agents, servants, employees or any person claiming under any of them from further claim of right and interference with the use of the land as access route to the appellants' land;***

8. ***By order of this court, the office of the district staff survey is accordingly directed to verify the boundaries and take any corrective measures to rectify any errors on the titles which are the subject of this appeal and identify a proper access route for the appellants to their land comprised in block 18 plot 391;***

9. ***The exercise shall bear in mind what was in existence at the time when the title was created; and also taking into account the***

existing interests of Henry Ssebunya in the land comprised in block 17, plot 1028, under which he was registered as the owner since 25th July, 1997 and had remained so registered as at 6th May, 2016, a year after the lease was granted to the respondents;

10. The verification/correctional exercise must be conducted in the presence of the parties to this appeal, any party with valid interest; the Lcs; Police and neighbours.

11. Costs awarded to the appellants, in the lower level and in respect of this appeal.

Alexandra Nkonge Rugadya

Judge

13th March, 2024

Delivered by email

13/3/2024