THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: WAMBUZI, C.J. ODER, TSEKOOKO, KAROKORA AND KANYEIHAMBA, J.J.S.C.)

CIVIL APPEAL NO.7 OF 1999

BETWEEN

JOY TUMUSHABE AND ANOTHER……. APPELLANTS

AND

M/S ANGLO-AFRICAN LTD AND ANOTHER…….RESPONDENTS

(Appeal from the decision and orders of the Court of Appeal at Kampala (Kato, Mpagi-Bahegeine and Berko, J.J.A) dated 5th day of November, 1999 in Civil Appeal No.38 of 1997 confirming the decision and orders of the High Court of Uganda at Kampala (Ntabgoba, P.J.) dated 6th March, 1996 in Civil suit No.79 of 1995)

JUDGMENT OF KANYEIHAMBA, J. S. C.

This is a second appeal. It is brought against the judgment and orders of the Court of Appeal confirming the judgment and orders of the High Court in favor of the respondents.

The following appear to be the undisputed facts and background leading to this appeal. Plot No.45 Ben Kiwanuka Street in Kampala comprises of shop premises downstairs and a residential flat upstairs. Before the expulsion of Asians by the Military regime in the 1970s, the premises which I will hereafter refer to as the suit premises were owned by two Asians, a Mr. Hirji and a Mr. Laximidas Dalia. After the expulsion, the suit premises were vested in and managed by the Departed Asians Property Custodian Board.

The Departed Asians Property Custodian Board subsequently rented the residential flat to Joy Tumushabe, the 1st appellant in this appeal and the shop to Nyaburisa Enterprises Ltd, the 2nd appellant. The latter carried on the business of a shop which was managed by the 1st appellant.

On 28th April, 1993, Laximidas Dalia obtained repossession of the suit premises and as he lived outside Uganda, he appointed M/s Anglo African Limited, the 1st respondent whose

Managing Director was one Rennie Richardson, to manage the suit premises. Dalia's letter written on 15/3/93 and appointing Anglo African Limited as Managers of the suit premises was copied to the tenants in the suit premises and it informed them that the new managers of the property who were to manage it for a period of twelve months only, would have authority not only to manage but also to collect rent and deal with any matter pertaining to the management of the property.
Following repossession, the Departed Asians Property Custodian Board notified all the tenants in the premises and advised them to deal with the owner who had now become the landlord instead of the Board.

On 20/9/93, Dalia appointed Mr. Rennie Richardson, C/o Anglo African Limited, to be his attorney and, in Dalia's name and on his behalf, to act and do all, or any of the things an authorized attorney may do in relation to the suit premises. The appellants, on the advice of their lawyer, refused to pay the rents to the first respondent, challenging the status of Laximidas Dalia as owner of the suit premises. In fact, the appellants obtained a temporary injunction from the High Court restraining Dalia or his manager from evicting them. Subsequently, the temporary injunction was vacated, but the appellants persisted in refusing to pay the rents due.

On 1st August, 1994**,** M/s Anglo African Limited, authorized in writing, M/s Security Auctioneers to 'levy and distress for rent and evict' the appellants from the suit premises. M/s Security Auctioneers Limited gave instructions to their employee, Mr. Freddie M. Kasozi to the effect the wishes of M/s Anglo African Limited, and to levy from the 2nd appellant, the sum of shs. 23,142,024/= in respect of rents for the shop and fix the 1st appellant, the sum of shs. 2, 972,075/= in respect of rents for the residential fiat. M/s Security Auctioneers gave notices to the appellants demanding payments of the moneys due and vacation of the suit premises without further delay. The notices to the appellants were dated 9th August, 1994. With no positive responses from the appellants, the respondents, with heavy support from the police, invaded the suit premises and proceeded to take into their custody property belonging to the appellants. The appellants brought a suit in the High Court against the respondents claiming that the respondents had neither the capacity nor legal authority to carry out distress for rent or evict the appellants. In the suit, the appellants claimed both special and general damages. For the respondents, it was submitted that as the appellants had resisted the authority of the lawful owners and refused to pay rent, they had become trespassers and the

owners or their agents were entitled to distress for rent and evict the appellants from the suit premises.

After hearing the evidence and submissions of counsel for all the parties, the learned Principal Judge dismissed the claim with costs and concluded his judgment with the words, "The first plaintiff should, if she wishes, collect from the two defendants the items of property listed down in Exhibit D. 1" The appellants appealed to the Court of Appeal which confirmed the decision and orders of the High Court and dismissed the appeal with costs, hence this appeal.

The Memorandum of Appeal contains five grounds framed as follows

1. The learned justices of Appeal erred in law and fact and misdirected themselves on interpretation of section 3 of the Distress for Rent (Bailiffs) Act, (Cap. 68).

2. The learned Justices of Appeal erred in law and fact when they failed to properly evaluate the evidence as the first appellate court, thereby arriving at wrong conclusions that

(a) The landlord legally exercised the right to levy distress

(b) M/s Anglo African Ltd. were Laximides Dalia's attorneys.

(c) Exhibit P.1 was impliedly revoked by Exhibit D.3

(d) No property was levied from the shop and no proof thereof.

(e) The Appellants were not entitled to damages.

3. The learned Justices of Appeal erred in law and fact when they held that Freddie Kasozi acted lawfully.

4. The learned Justices of Appeal erred in law and fact when they failed to consider the admissibility of Exhibit D.l as ground of Appeal.

5. The learned Justices of Appeal erred in law and fact when they failed to order that the property levied in the flat be returned to the 1st appellant.

Mr. Babigumira argued grounds 1,2, and 3 together. He first submitted that the appellants, who had been lawful tenants of the Departed Asians Property Custodian Board, had refused to accept Mr. Laximides Dalia as their landlord or owner of the suit property. Indeed, on this

very matter, the appellants had gotten a High Court temporary injunction against the alleged owner albeit that the injunction was later vacated. In consequence, neither Mr. Laximidas Dalia nor anyone else purporting to act on his behalf had authority to distress for rent against or evict the appellants from the suit premises. Counsel cited *Souza Figueiredo & Co. Ltd. v. George & Others (1959),* E.A. *756,* in support of the proposition that there must be a landlord/tenant relationship before a landlord can exercise his powers under the law. In holding that this relationship existed between Mr. Laximides Dalia and the appellants, the learned Principal Judge had erred in both fact and law and, in confirming the decision of the trial court, the Court of Appeal had, as a first appellate court, failed to reevaluate the evidence. Mr. Babigumira further submitted that the persons who are by law authorized to distress for rent are either the actual owners of the suit premises, or their duly appointed attorneys, or a certified bailiff or a claimant of a reversionary interest in the premises. These are the requirements of the Distress for Rent (Bailiffs) Act, (Cap. 68) and according to the rules under the same Act, such distress may only be affected by a person who has either a general or special certificate to distress for rent. Neither Laximides Dalia nor anyone claiming to act on his behalf or with power of attorney had any authority to distress for rent or evict the appellants from the suit premises.

In consequence, in distressing for rent and evicting the appellants, the respondents had acted illegally. In the first instance, neither Anglo African Limited nor Mr. Charles Rwija were licensed court brokers or bailiffs and neither could instruct anyone else to act on their behalf as such. The instrument which Laximides Dalia executed on 20 September, 1993 appointed one Rennie Richardson as attorney in his personal capacity and the fact that he happened also to be the managing director of Anglo African Limited did not, in any way, make the latter the attorney. It was therefore erroneous on the part of the Court of Appeal to infer from these facts that Anglo African Limited was the duly appointed attorney of the owner of the suit property since it was not Richardson who gave instructions to distress for rent or evict the appellants. A power of attorney cannot be granted by an agent of a person who holds that power nor indirectly by the holder to a juristic person of which he happens to be a director. Consequently, the instructions to and the actions of the auctioneers did not comply with the requirements of the law and were therefore illegal. Counsel contended that the decision of Justice Berko, J.A, that exhibit P1 had been impliedly revoked by exhibit D3 was erroneous both in law and fact since the two documents were not linked at all. P1 which granted powers of management to Anglo African Ltd. and

which had, in any event, expired, was not connected with exhibit D3 which dealt with the appointment and powers of Rennie Richardson as attorney. In effect, the Court of Appeal had failed to correctly reassess the evidence on this matter.

On the issue of the number and type of property taken from both the flat and shop, it was the contention of counsel for the appellants that the Court of Appeal should have rejected the trial court's findings and held the first appellant's own list of the property and its value as correct. He submitted that the court had therefore erred in holding that as there was no proof regarding the property which had been levied from the shop, the appellants were not entitled to the return of any of it. On ground 3 of appeal, counsel for the appellants submitted that since the evidence showed that Freddie Kasozi was not qualified to act as a bailiff and had not been properly appointed to act on behalf of the auctioneers, the Court of Appeal erred in both law and fact when it held that Freddie Kasozi had acted lawfully.

Mr. Nkurunziza for the respondent opposed the appeal. He argued ground I of the appeal first. He contended that the appellants had failed to show that the Court of Appeal had misconstrued the law. A refusal by a tenant to submit to the authority of a new landlord who has legally and legitimately succeeded another does not, in any way, alter their relationship of landlord and tenant. It was therefore counsel's contention that both the trial Judge and the Court of Appeal had properly construed section 3 of the Distress for Rent (Bailiffs) Act. On whether or not Freddie Kasozi, the second respondent, was qualified, Mr. Nkurunziza submitted that Kasozi worked for Charles Rwija, the owner of Security Auctioneers who were qualified to distress for rent, and acted as their agent. Mr. Nkurunziza submitted that the case *of* *Souza Figueiredo & Co Ltd. v. George and Others* (supra) cited by counsel for the appellants in support of his submissions was distinguishable from the facts of this case in that in the *Souza* case, no legal relationship existed between the parties at all.

With regard to grounds 2 and 3 of the appeal, counsel for the respondents submitted that the evidence of Rennie Richardson showed that as director of Anglo African Limited, he was acting for and on behalf of that firm in the management of the suit premises and in the exercise of the power of attorney granted to him by Laximides Dalia. Counsel therefore contended that both the High Court and the Court of Appeal were correct in their decisions relating to ground 2 (a) (b) and (c) of this appeal.

On ground 3, counsel submitted that the appellants had not shown that Freddie Kasozi was not acting with authority. Respondents had shown that Kasozi was an employee of the Security Auctioneers owned by Rwija. The onus of disproving these facts rested upon the appellants and they had failed to discharge it. The High Court and the Court of Appeal relied upon those facts and relationships between the parties whose decision, as in the case of *Kampala City v. Nakaye (1972)* E.A. 446, depended on the credibility of witnesses. The courts' findings in this case were amply supported by other evidence. Counsel contended that in relation to the items of goods levied in the suit premises, the trial Judge had opportunity to observe the demeanor of witnesses and to believe or disbelieve any of them. In the result the learned trial Judge chose to believe one set of figures rather than the other and the Justices of appeal had no reason to disagree with him. Mr. Nkurunziza submitted that the property which had been legally removed from the suit premises had been witnessed by a police officer who countersigned the list containing that property and the appellants could have collected that property as suggested by the learned trial Judge but they chose not to do so. In the result, counsel for the respondent asked this Court to dismiss grounds 2 and 3 of the appeal.

Although the pleadings and the submissions do not bring them out precisely, it is my opinion that this appeal raises two distinct and different issues to be considered and resolved. These are whether or not the distress for rent and seizure of appellants' property for purposes of levying them for rent were lawful and, whether in any event, the owner of the suit premises or his authorized agents had power to evict tenants who had resisted his authority and notices to quit and whether such owner or the said agents had authority to detain appellants' property after eviction.

I will deal with the matter of distress for rent first. On the facts of this case, there is no doubt in my mind that a landlord/tenant relationship existed between Laximides Dalia who had repossessed the suit premises from the Departed Asians Property Custodian Board and the appellants. Previous to the incidents leading to this case, the appellants had properly and regularly acknowledged the Board as their landlords. Repossession of the suit premises was lawfully effected and accepted by the Custodian Board which informed the appellants in writing of the new change of ownership. There is evidence that the appellants challenged the right of Laximides Dalia to the repossession certificate by way of a High Court suit and obtained a temporary injunction which was later vacated.

Their challenge against the owner's entitlement to the suit premises and their refusal to pay rents due changed their status from lawful tenants to trespassers. Mr. Nkurunziza cited a passage from Halsbury's Laws of England, Third Edition, vol.38, at p.741, paragraph 1207 in which the learned authors observe,

"If a tenancy determines by effluxion of time or otherwise, and former tenant remains in possession against the will of the rightful owner the former tenant is, apart from statutory protection, a trespasser from the date of the determination of the tenancy." which is relevant to this case.

In my opinion, when the appellants refused to pay rent or acknowledge the title of the owner as landlord, they became trespassers. The argument of counsel for the appellants that since they did not at any time accept Laximides Dalia as the true owner of the suit premises indicates that the relationship of landlord and tenant did not exist between the parties is correct because they immediately became trespassers. At this juncture, the landlord could have chosen to legally evict them as trespassers. However, he or his agents chose to proceed under the provisions of the Distress for Rent (Bailiffs) Act, (Cap. 68). I agree with the submissions of counsel for the appellants that he who chooses to distress for rent under the Act must do so strictly in accordance with the provisions and rules of that Act. The bailiffs who are authorized to distress for rent must be qualified and do so in accordance with the terms and conditions prescribed in the Act or rules made there under. In any event, distress for rent is only permissible if the relationship of tenant and landlord exists between the parties but as I have shown, that relationship had ceased to exist as a result of the appellants' acts and conduct. In the result, distress for rent in this case was effected against trespassers, and it could not have been possible for the persons who effected the alleged distress for rent to do so under the Act.

Another question to answer on grounds 1, 2 and 3 of appeal is whether the respondents were qualified bailiffs in accordance with the law in his leading judgment, Berko, J.A. quite rightly, stated that the determination of the issues raised in grounds (a) (b) and (c) required a consideration of the provisions of the Distress for Rent (Bailiffs) Act, (Cap. 68). The learned Justice then cited section *3* of the Act which provides;

"3. From and after the commencement of this Act, no person, other than a landlord in person, his attorney or the legal owner of the reversion, shall act as bailiff to levy any

distress for rent unless he shall be authorized to act as bailiff by a certificate in writing under the hand of a certifying officer, and such certificate may be general or apply to a particular distress or distresses ."

According to the learned Justice a certifying officer is, a magistrate of the First Class, a Chief Magistrate and a Magistrate Grade One. Persons authorized under the Act to levy distress for rent include (a) the landlord himself (b) an attorney of the landlord, (c) the legal owner of the reversion, and (d) any person authorized to act as bailiff by a certificate in writing under the hand of a magistrate.

The evidence before the learned trial Judge and the submissions before the Court of Appeal do not reveal that any of the persons enumerated above as authorized is the person or persons who distressed for rent under the Act. Despite the absence of such evidence the learned Justice of the Court of Appeal, Berko, J.A, concluded,

"The authority to manage the suit property emanated from Exh. D. 3 and was operative when the instructions to levy the distress for rent were given. The learned Judge was therefore right when he held that since Anglo-African Ltd. were managers of the suit property and were the attorney of the landlord, they were authorized to levy distress for rent on the suit property. The instructions to evict the plaintiff were given to a firm known as Security Auctioneers. The sole proprietor of this firm is one Charles Rwija who is a court bailiff .The general nature of the business of the firm is said to be Court Bailiffs/ Auctioneers. Charles Rwija apparently does business under the name and style of Security Auctioneers. I am unable to find anything wrong in Anglo-African Ltd. employing court bail to levy the distress."

With great respect, the learned Justice's conclusions have very little bearing to the requirements of the terms and conditions of the Distress for Rent (Bailiffs) Act under which the respondents carried out the distress and seizure of the appellants' property for purposes of levying it for rents due. I agree with the submissions of counsel for the appellants that on this matter the trial Judge did not properly evaluate the evidence and the re-evaluation of the same by the of the Justices of the Court of Appeal fell far short of the standard reflected in the judgment of Oder,J.S.C., with which the other members of the Court concurred in *Banco Arabe Espanol v. Bank of Uganda. Civ. App. No.8. of 1999* where my learned brother said,

"in my opinion the present is one of the clear cases in which it is incumbent on this court to re-evaluate the evidence. This is because, with the greatest respect, the Court of Appeal failed in its duty, as first Court of Appeal to subject the evidence in the case to that fresh scrutiny which the appellant expected it to do."

In *Eastern Radio Service And Another v. R.J Patel t/a Tiny Tots And Another (1962)* E.A. 818, the appellant was a tenant and the first respondent was landlord of certain premises in respect of which the landlord advocates claimed some shs. 14,000/= for arrears of rent and expenses and in their letter of claim also indicated that the landlord might exercise his right of re-entry for non-payment of the rent.

Later, proceedings were instituted for rent arrears and for vacant possession of the premises. Subsequently, the plaint was amended to exclude the claim for vacant possession. In February, 1959, the first respondent authorized the second respondent to levy for distress in respect of rent accruing from June 1, 1958 to January 31, 1959. The goods were later sold by auction. The appellant filed an action for damages against both respondents claiming that the distress for rent was unlawful since rent payable became due after the first respondent had enforced his right for forfeiture and therefore the tenant had become a trespasser against whom no distress of rent could ensue. It was also alleged that the second respondent was not a holder of a bailiff's certificate. The trial judge held that the first respondent had not really finally elected to terminate the tenancy and in any event, was not vicariously liable for the acts of the second respondent who distressed for the rent. On appeal, the President of the Court, Sinclair P. with Newbold, J.A. concurring, held that the first and second respondents were both liable in trespass as joint tortfeasors, as if it was a case of principal and agent. The damages which had been awarded by the trial Judge were increased.

In the case of *Kanji Naran Patel v. Noor Essa And Another,* (1965) E.A. 484, it was held that when a distress for rent is illegal, it is the bailiff who is primarily liable and the landlord is only liable, if he can be shown to have sanctioned or ratifies the bailiffs wrongful act. In light of what I have said on the matter of distress for rent and, bearing in mind the authorities reviewed, it is my opinion that grounds 1 and 2 (a), (b) and (c) must succeed.

I now come to the second issue which is implicit in grounds 2 (d) and (c) and ground 3 of appeal, namely the issue of whether the eviction of the appellants from the suit premises was lawful and whether in the process of that eviction, the respondents were entitled to remove

and take away the appellants' property. I do not agree with the submissions of counsel for the appellants that their eviction had to comply with the provisions of the Distress for Rent (Bailiffs) Act. I have already held that despite the appellants' protests and refusal to acknowledge Laximidas Dalia as the new owner of the suit premises, in both law and fact he was the owner and they had become trespassers.

Secondly, I have also observed that where tenants defy the landlord's terms and conditions of tenancy agreed between the parties, and the landlord gives notice to repossess or effect a lawful act which the tenants continue to disregard, they become trespassers on the property concerned. In that event, the owner may resort to any legal means to achieve the desired objective, namely of evicting the defiant trespassers as well as removing their property from the premises so as to leave those premises vacant.

Thus, in a series of cases, including Jackson *v. Courteneou (1857)* 8 E & B. 8, *Ex. Ch.. Scott v. Matthew Brown & Co. Ltd. (1884)51* LT. 746, *Shaw v. Chairitle (185O)* 3 Car. & Kir. 21 and *Hemmings v. Stoke Pages Golf Club Limited And Another (1920)* 1K.B. 720 (C.A.), it has been the principle that if a trespasser peacefully enters or is on a land, the person who is in, or entitled to, possession may request him to leave, and if he refuses to leave that person may remove him from the land, using no more force than is reasonably necessary. In the case of *Heminings And Wife v. The Stoke Pages Golf Club Limited And Another* (supra), Scrutton, L.J. said,

"*This case raises a legal question of great interest and general importance, shortly stated the question is whether, an owner of landed property finds a trespasser on his premises, he may enter the premises and turn the trespasser out, using no more force, than is necessary to expel him, without having to pay damages for the force used So stated, common honesty and common sense would answer, "of course he may."*

Under the circumstances of this case, I am satisfied that the respondents had the power to evict the appellants from the suit premises in accordance with the provisions of the law. It is trite law that the owner of property has the right to evict a trespasser who has refused to vacate the property as was held in *Harvey v.Brvdges* 14M & W437.

Moreover, where such eviction is effected, the owner may also remove the property and goods of the person evicted to leave the premises empty.

In light of the foregoing, grounds 2 (e) and (3) in so far as they relate to the eviction of the appellants from the suit premises must fail.

Finally, I will deal with grounds 4 and *5* of the appeal. The matters which are raised in these grounds relate to what the appellants claim were ignored by the Court of Appeal. The grounds of appeal which that Court did not consider and resolve, were specifically framed in the memorandum of appeal before that Court as follows:

"(c) The learned Judge having found that the respondents had taken the 1st appellant properly erred in refusing to order that respondents return the 1st appellant s' *property or pay to the 1st appellant the value of the property so taken.*
(f) The learned Judge erred in law when he admitted in evidence exhibit D4 (sic)"

For the appellants, Mr. Babigumira submitted that the Court of Appeal erred in law and fact when it failed to consider and resolve the issues raised in these two grounds. Counsel cited the case of *Trevor Price & Another v. Raymond Kelsall (1957)* L.A. *752* in support of his submissions on ground *5.* On ground 4 Mr. Babigumira contended that whether or not a document is admissible in evidence is a matter of law, yet the learned Justice Berko, J.A. treated this matter as obiter.

Mr. Nkurunziza for the respondent contended that the judgment of the Court of Appeal on grounds 4 and 5 was correct. He submitted that the appellants had failed to show any reasons why the judgment on those grounds should not be upheld. He further contended that the findings on ground 5 by the trial Judge were based on the evidence, demeanor and credence of witnesses and therefore the Court of Appeal had no reason not to believe the findings of the learned trial Judge. On ground 4 of appeal, Mr. Nkurunziza contended that since on all other grounds the Court of Appeal had confirmed that the distress for rent was lawful, there was no need to consider any other grounds of the appeal.

Before disposing of the two grounds, I wish to note that the findings of the learned Justice of appeal, Berko J.A., who gave the leading judgment on those two grounds, were couched in the following words

"Since I have found that both the eviction and distress for rent were lawfully done, there is no need to consider the grounds that deal with remedies."

It is also worth noting that there were other grounds not considered by the same Court, namely (d) and (e).

With respect, not all the grounds not considered by the Court of Appeal were remedial as stated by the learned Justice. Indeed, ground (f) was not remedial at all but involved an essential document submitted to the Court as evidence. Its admission or inadmissibility might have led either or both of the Courts below to come to different conclusions on the case.

In my view, litigants or appellants before any Court are entitled to have a ground or grounds of their claims or appeal, as the case maybe, considered and resolved by the Court if that ground or grounds would, if not dealt with, leave some matter or matters raised in the case unresolved. Failure to consider and resolve such matters or evaluate or re-evaluate the evidence relating to the same would be a failure on the part of the Court to do its duty. Such failure would necessitate an appellate Court or a second appellate court to intervene to ensure that no miscarriage of justice was occasioned by such failure and that the evidence is re-evaluated in accordance with the rules of the Courts. Thus in *Trevor Price And Another v. Raymond Kelsall* (supra), it was held that;

"Where it is apparent that the evidence has not been subjected to adequate scrutiny by the trial Court before expressing a view it is open to an appellate court to find that the view of the Judge.... is ill-founded it is the duty of an appellate Court to evaluate evidence itself'

In my opinion, the Court of Appeal failed to do so on the two grounds. And as we have reiterated in a number of decisions including that in *Banco Arabe Espanol v. Bank of Uganda*, (supra) in such cases, we as a second appellate Court will do so.

The ground framed in paragraph (d) of the Memorandum of Appeal before the Court of Appeal which was factual and evidential should have been resolved one way or the other in the interests of justice. On ground 4 of the appeal before this court the Court of Appeal should have considered and resolved the issue of whether or not exhibit Dl was admissible. The Court simply commented that the trial Judge should have made a ruling on it without the Justices of the Court of Appeal themselves doing so. In my opinion, by failing to do so, the

Court of Appeal misdirected itself It is also my view that, in any event, Exhibit Dl was admissible.

With regard to ground 5 of the appeal, although I have held that, the seizure of the first appellant's property from the flat for purposes of distressing for rent was illegal, I have also held that her eviction from the flat as a trespasser was lawful and justified.

In the result, this Appeal partially succeeds. Taking into account all the facts and circumstances of this case, I would order that such property as was proved to have been removed and listed in accordance with the findings of the trial Court should be returned to the appellants or its value paid to them by way of compensation. In addition, the sum of one hundred shillings (100/=) is awarded to the 1st appellant as general damages for the unlawful distress for rent. The eviction of the appellants from the suit premises was lawful and is hereby confirmed.

The appellants are awarded one half (1/2) of the costs of this appeal.
Dated at Mengo this .... 15th day of... .February 1999.

G.W. KANYEIHAMBA
JUSTICE OF THE **SUPREME COURT**

I CERTIFY THAT THIS IS
A TRUE COPY OF THE ORIGINAL

……
W. MASALU MUSENE
REGISTRAR, THE SUPREME COURT

JUDGMENT OF WAMBUZI. C.J.

I had the benefit of reading in draft the judgment prepared by Kanyeihamba, JSC which sets out the facts.

I agree that this appeal raises two broad issues, that is, whether the distress for rent and the evictions were lawful. The third issue was the admissibility of exhibit D4.

I also agree that the memorandum of appeal could have been better framed, for example, ground 1 provides:

"The learned Justices of Appeal erred in law and fact and misdirected themselves on interpretation of section 3 of the Distress for rent (Bailiffs act) (cap 68)

This ground offends rule 81 of the rules of this court, which provides that a memorandum of appeal shall set forth concisely under distinct heads without argument or narrative the grounds of objection to the decision appealed against specifying the points, which are allegedly to have been wrongly decided. Ground 1 does not say in what way the court of appeal's decision is wrong. One has to go to ground 2 to appreciate the alleged misdirection on the interpretation of section 3 of the distress for rent (bailiffs) act: that is to say whether the provisions of that section were complied with. Under that section the persons who could levy distress for rent are the landlord himself, the attorney of the landlord, the legal owner of the reversion and a person authorized to act as bailiff by a certificate in writing under the hand of a magistrate.

On the facts and evidence there is no dispute as to who the landlord is. The dispute is whether the first respondent, Anglo- African Ltd, was appointed attorney by the landlord.

According to a letter to all the tenants dated 15th March, 1993, signed by Dalia, Exh. P1, Anglo-African Ltd. was appointed property managers, authorized to collect rents and to deal with any matter pertaining to management of the property for twelve months. It was not Rene Richardson as held by the learned Berko J.A. It seems to me therefore that on 1st August 1994 when M/s. Anglo African Ltd. authorized security auctioneers to levy distress

they have no authority to manage given to them on 15/3/93 expired in March 1994. The power of attorney dated 20/9/93, Exh D3 were given to Rennie A. Richardson who appointed manager and not to Anglo-African Ltd. These are two different people in law and the fact that Richardson was director or Managing director of Anglo-African Ltd does not alter the position . Whereas Richardson could as Managing Director act for Anglo- African Ltd. Anglo-African Ltd. could not act for Richardson.

With respect, I think it was misdirection on the evidence by the learned justices of appeal to conclude that the first respondent had power to exercise the power of attorney. I would accordingly agree that the distress for rent was illegal.

On the record of the proceedings as it stands in the two courts below, it appears that the appellants never recognized Dalia as their landlord. They never paid rent. They questioned the landlord's title and even obtained an injunction against the landlord. It seems to me that at that point, there was no lease between the parties and the would be lessees became trespassers from the very beginning. In any case, it seems that the learned trial Judge found as a fact that by the time of eviction, the appellants were trespassers. This in my view would be another reason for holding the distress illegal, as there was no landlord and tenant relationship.

Coming to the second issue of whether the evictions were lawful, it is well settled that if a tenancy determines and the former tenant remains in possession against the will of the rightful owner, the former tenant is a trespasser from the date of the determination of the tenancy (Halsbury's Laws of England, 3rd Edition, Vol.3 8, p.741).

In the case before us, there was a tenancy between the Custodian Board and the Appellants. When Dalia obtained repossession of his property the appellants refused to recognize his title and it would appear to me that any lease of the property by the appellants determined at that point.

It appears that a trespasser who refuses to leave may be removed from the land using no more force than is reasonably necessary (Halsbury's Laws of England, 3rd Edition, Vol. 38, p.'747).

In this case I do not think it matters who carried out the actual eviction as long as they are acting for and on behalf of the landlord.

It was open to the respondent to simply remove the property from his land It appears that the property was actually carried away and kept by the respondent, ostensibly for purposes of levying distress for rent. As the respondents were not entitled to levy distress for rent on the appellants' goods they were under a duty to make the goods carried away available to the appellants or to pay the value of such goods as were proved to have been carried away for which the respondent failed to account to the appellants.

This brings me to the third issue in this appeal relating to admissible of Exh. Dl. I agree, with respect, that the Court of Appeal erred in law when it failed to consider the ground of appeal relating to the admissibility of Exh. D4. It was not a matter for comment as obiter.

Be that as it may, the record indicates that the admissibility of Exh. D4 was objected to and the document was admitted for identification purposes, the learned trial Judge reserving his ruling on it in his judgment. The learned Berko, J.A. quite correctly, in my view, pointed out that in this particular case, the court should have ruled on the matter as the parties were entitled to know whether or not to rely upon it as evidence. It turns out, however, that the admissibility of Eh. D4 was not in issue at the stage the parties made their final submissions. It was admitted that the first appellant's property was taken away and that later she was invited to collect her property but failed to do so. The learned trial Judge did not specifically rule on the admissibility of Exh. D4 but he relied on it as indicating what property had been taken away by the respondents. The exhibit was properly produced; there was evidence of its making and being witnessed. In the circumstances, I am unable to say that failure to rule on the admissibility of the document occasioned any miscarriage of justice.

In the circumstances, I would agree with the orders proposed by the learned Kanyeihamba, JSC and as the other members of the Court agree with the judgment and order of the learned Justice of Appeal, there will be orders in the terms proposed by him.

Dated at Mengo this .... 15th day of ....February 1999

S.W.W. WAMBUZI
CHIEF JUSTICE

I CERTIFY THAT THIS IS
A TRUE COPY OF THE ORIGINAL

……..
W. MASALU MUSENE
REGISTRAR, THE SUPREME COURT

JUDGMENT OF ODER J. S. C.

I have had the benefit of reading in draft the judgment of Kanyeihamba, J.S.C. I agree with the conclusions made and the reasons given by him. I have nothing

useful to add.

Dated at Mengo this .... 15th day of ....February 1999

A.H.O. ODER

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS

A TRUE COPY OF THE ORIGINAL

……..

W. MASALU MUSENE

REGISTRAR, THE SUPREME COURT

JUDGEMENT OF TSEKOOKO, J. S. C.

I have had the benefit of reading in draft the lead judgment of Kanyeihamba, J.S.C. and that of Wambuzi, C.J. I agree with the conclusions reached in this matter and the orders proposed

by Kanyeihamba, J.S.C. I have nothing useful to add.

Delivered at Mengo this ....15th day of ....February 1999.

J.W.N. TSEKOOKO

JUSTICE OF THE SUPREME COURT

I **CERTIFY THAT THIS IS**

A TRUE COPY OF THE ORIGINAL

……..

W. MASALU MUSENE

REGISTRAR, THE SUPREME COURT

JUDGMENT OF KAROKORA, J. S. C.

I have had the advantage of reading in draft the judgment prepared by my learned brother Kanyeihamba, J.S.C. I agree with his judgment and the orders he proposed. I have nothing

useful to add.

Dated at Mengo this.... 15th day of ....February 1999.

A.N. KAROKORA.

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS

A TRUE COPY OF THE ORIGINAL

W. MASALU MUSENE

REGISTRAR, THE SUPREME COURT