

UGANDA / JUDGMENT

Okui v Nsubuga and Another (Civil Suit 469 of 2023) [2024] UGHCLD 260 (16 October 2024) [2024] UGHCLD 260

COURT

HC: Land Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Civil Suit 469 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

clvrl. suIT No. 469 0F 2023

5 PATRICK JAMES OKUI PLAINTIFF'

VERSUS**1. NSUBUGA SHARIF.****2. COMMISSIONER LAND REGISTRATION.....,..... DEFENDANTS****Defsf: Lqdy Justice Alexandra Nkonge Rugadya****10****JUDGMENT:****Introduction:**

The plaintiff, Patrick. James C)kui filed this suit against the Commissioner, Land Registration and Mr. Nsubuga Sharif, sceking a sevrcl reliefs against them, including damagcs for the allcgcd trespass and fraud in respect of land

comprised tn Kgad.ond.o plot 352 block L95, land dt Kganja. (suit land). 15

Background to the case:

The plaintiff, filed this suit as the only biological child and bcneficiary of the late He11en Etoori Mashaba who was rcgistcred owncr of the suit land. Following her demisc, the plaintiff was nominated by the family as the administrator of his late mother's estate.

He embarked on the process of obtaining letters of administration for the estate. But before he could complete the process, without his knowledge and consent, the 2nd defendant purported to make a transfr of the suit property into the names of the 1"t dcfndant.

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As per affidavit of service filcd by Mr. Ainc Raymond, a lcgcl assistant in the firm ol M/s Kirunda & Co. Aduocates, dcponed <>n 24th November, 2023 the summons were served by substituted servicc. A copy of the advert in the Daily Monitor new papers was also attachcd, by which the 1"t dcfndant had been summoned to filc a dcfcncc.

All efforts prcviously made by the plaintiff through his counsel, M/s Klrunda & Co. Aduocates to trace the whereabouts of the 1"t dcfndant, initially by reaching out to Mr. Andrew Wanyaka (who at the time was known to be his counsel); and later directly to the 1"t defendant himself, via mobile phone had failed to attract any response from him.

Paragraph 7 (2) of the Constitution (Integration of ICT) into the Adjudicdtion Processes for Courts of Judicature) (Practice Directions), 2079 provides Linat in preparing a case for tia\ the parties shall be specificallg encouraged.. .. to serue documents electronicallg through email, instant

messaging applications and any other widely used communications service. 15

It has also been held in a case cited by counsel that service through WhatsApp is effective service. (F.EJ: SBI Cards & Payments Services Pvt Ltd as Rohidas Jadhav, High Court of Judicature at Bombay, Notice No. 7748 of 2015 in Execution Application No. 7796 of 2015).

The 1st defendant neither filed a written statement of defence nor in any other way responded to any of the messages sent to him via WhatsApp. He did not turn up in court to defend himself. 20

Much to his disadvantage, the 1st defendant totally ignored the said efforts by this court and by the plaintiff to reach out to him and in so failing therefore

closed himself out of the trial. It is on that basis that this court to hear the matter in his absence. 25

The 2nd defendant on his part was also duly served, but after filing a defence never turned up in court for the hearing.

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Preliminary objection :

The plaintiff who was represented by M/s Kirunda and Co, Advocates, submitted that the written statement of defence had been filed out of time; and that the 2nd defendant never sought prior leave of court as required by law to file his defence. He therefore invited this court to strike out.

Citing order 8 rule 7 (2) of the Civil Procedure Rules he argued that the plaintiff had served the defendant with summons to file his defence and that as stipulated by the rule, (and in absence of any other order to the contrary), the said defendant in that case had to file his defence within fifteen (15) days after service of summons.

The court in this case had issued summons to the 2nd defendant to file its defence on 6th June, 2023. Service was duly effected onto the office of the 2nd defendant on 12th June, 2023.

As per the order 8 rule 1(2) of the CPR, the 2nd defendant only had up to 27th June, 2023 to file a defence , but instead filed the same on 5th September, 2023, over three months after the stipulated time, and without prior leave of court. 15

From the court record, further endeavours had been made by this court through the plaintiffs to involve the 2nd defendant in the proceedings of court.

On 17th April, 2024 the timelincs of court were dispatched together with the plaintiff's trial bundle, witness statements and letter forwarding the draft JSM for service to the 2nd defendant. 20

These were acknowledged by the 2nd defendant's officials. In addition, upon request, the draft scheduling memorandum was sent to the 2nd defendant at a

given specific email address and despite their input in the JSM which had been incorporated therein, the 2nd defendant officials refused to sign the document and also failed to turn up in court to defend itself. 25

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Timelines set by statutes are matters of substantive law and not mere technicalities and ought to be strictly complied with. (URA vs Consolidated Properties Ltd. CACA JVo. 3. I of 2000),

The general rule therefore is that where a defendant does not file a defence or

5 fails to file it within time as stipulated, he or she needs to seek leave of court to file the defence outside the time : (ref: Stop and See (Uganda) Ltd vs Tropical Africa Bank Ltd, HCMA No. 333 of 2010).

Thus when the defence is filed outside the timelines as did happen in this case, the implication is that there is no defence on record. In light of the above

findings, the 2nd defendant's WSD is accordingly struck out as no prior leave was sought for and granted by this court to file it out of time which makes the defence therefore incurably defective. 10

Since the 2nd defendant also by conduct declined to do any other act in furtherance of the proceedings, the hearing against it proceeded ex parte.

15 Issues,'

- 7) Whether 1st defendant fraudulently and illegally procured the transfer of land comprised in Kgadondo plot 352 block 795, land at Kganja (sutt land) into his names.
- 2) Whether 7th defendant trespassed on the land comprised in Kgadondo plot 352, Block 795, land at Kganja.
- 3) Whether the 7th defendant maliciously damaged the plaintiffs property on land comprised in Kgadondo plot 352 block 795, land at Kganja.
- 4) Whether the 2nd defendant breached her statutory duty during the transactions relating to the transfer into the 7th defendant's name of the land comprised in Kgadondo plot 352 block 195, at Kganja

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5) Whether the plaintiff is entitled to the remedies sought.

Issues 7 and. 2:

These are to be considered jointly since they arise out of the same facts. I have carefully read the pleadings, the submissions as well as the numerous relevant authorities referred to by counsel for the plaintiff, for which he is greatly commended.

Although I may not refer to each of the authorities, I have taken all into consideration in resolving this matter.

The law:

10 Section 707 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist and the burden of proof lies on that person.

15 Section 103 further stipulates that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence.

The plaintiff in the instant case had the burden to prove not only that the suit land rightfully belonged to him as the sole beneficiary under the estate of his late mother, Helen Etoori Mushanga; that the suit was fraudulently transferred into the names of the defendant and that the defendant was a

trespasser on that land. 20

> The right to own property is enshrined in the provisions of Article 26 (2) of Constitution of the Republic of Uganda which guarantees the existence of that right for every person to own property either individually or in association with others.

In *Sheik Muhammed Luboua v. Kitara Enterprises Ltd* C. A No.4 of 1987, the East African Court of Appeal noted that in order to prove the alleged trespass, it was incumbent on the party to prove that the disputed land 25

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belonged to him; that the defendant had entered upon that land; and that the entry was unlawful in that it was made without his permission; or that the defendant had no claim or right or interest in the land. (Ref also: [LC. C. S No. 118 of 2012, *Tagebuta George and Anor Vs Kaginu Ngudde Mustafa*; *Justine E. M. N. Lutidga Vs Sterling Civil Engineering Co*, SCCA No. 77 of 2002).

Trespass to land occurs when a person directly enters upon land in possession of another without permission and remains upon the land, places or projects any object upon the land. It is a possessory action where if remedies are to be awarded, the plaintiff is required to prove a possessory interest in land.

Such possession should be actual and this requires the plaintiff to demonstrate his/her exclusive possession and control of the land. An action for the tort of trespass to land is therefore for enforcement of possessory rights rather than proprietary rights. (Odeyik Alex & Anor as Genua 4 others: Civil Appeal No. 9

of 2017). 15

> As stated in Tengebwa George and Anor vs Kagimi. EICCS v, 77 oJ 2072 quoting Ojuang vs Wilson Bagonza. CACA No. 25 of 2002, for one to claim interest in land he/she also must show that he/she acquired interest/title from someone who previously had interest/ title thereon.

Regarding fraud as another cause of action in this case, the term has been defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it, to part with some valuable thing belonging to him or to surrender a legal right. 20

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 the other shall act upon it to his legal injury. /See: FJK Zaabue vs Orient Bank & 5 Others SCCA v. 4 of 2006 at page 28). 25

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Counsel for the plaintiff cited the principle as highlighted in the Supreme Court case of Kampala Bottlers Ltd vs Do, ntanico (U) Ltd: SCCA v. 22 of 2019 that fraud must be strictly proved, the burden being heavier than one on the balance of probabilities generally applied in civil matters.

- ⁵ The particulars of fraud as pleaded in this case by the plaintiff against the 1st defendant were:
- 1) that the 1st defendant acted fraudulently and illegally in procuring the transfer of the suit land into his names;
- 2) forging a lands sale agreement purportedly executed by the late Hellen Etooi Mashaba on 1st June, 2018, approximately 7 years after her death;
- 3) unlawfully and fraudulently causing the transfer of the suit land into the 1st defendant's names on 2nd March, 2023 vide Inst. No. KCCA-OO102254;
- 4) holding out as the owner of the suit land and purporting to sell the suit land to one Sali Btlogi Deogratious;
- 5) procuring the demolition of the two- storeyed building on the suit land;

By virtue of the provisions of section 59 of the RTA, Cap. 240, it is a general rule that save for fraud, possession of a certificate of title by a registered person is conclusive evidence of ownership of the land described therein.

Thus read together with section 76 of the same Act any certificate of title, entry, removal of encumbrances, or cancellation in the Register book, procured or made by fraud is void as against all parties or privies to the fraud.

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As observed by court in *KDLB & Anor as Babuegaka & others* [2008] KALR 154 (S,CU) at page 169, a certificate of title obtained by fraud cannot be said to have been obtained lawfully; and such a certificate is defensible and liable to be cancelled.

5 In the present case it is not in dispute that there were two separate titles which were created in the names of two different parties on two separate dates over the same portion of land.

Separate entries were made by the 2nd defendant, once on 20th July, 2001 in the names of Ms. Helen Etoori Mashaba, and a second one on 2nd March, 2023, in the names of the 1st defendant. This was done without cancelling the previous one which had been created earlier in time.

Section 161 of the RTA gives this court power to direct the Commissioner, Land Registration to cancel any certificate of title, instrument or entry in the register relating to the land and substitute the certificate or entry as

circumstances of the case would require. 15

On account of the gravity of the allegation and its consequences, fraud must not only be specifically pleaded but also strictly proved. (*JWR Kdzoora as M. L. S Rukubet SCCA JVo. 13 of 1992*).

Within the spirit of *Sheik Muhamtned Lubowa versus Kitdra Enterprises*

Ltd C. A No.4 of 7987, the first question therefore is to establish what interest the plaintiff had in the estate of the deceased. 20

As pointed out in the pleadings and submissions no letters of administration were yet granted to him to administer the estate. Counsel cited several authorities, key amongst which was: (*Israel Kabuta vs Martin Banoba*

Musiga Civil Appeal No, 52 of 1995; Kiualabge Buule Ronald as SenJobe Benjannin CA No. 17 of 2021). 25

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The plaintiff, going by those authorities therefore had to satisfy court that he had interest in the estate as a beneficiary and therefore the locus standi to file this suit in order to protect the estate.

Analusis of the etidence:

5 The plaintiff relied on the evidence of three witnesses

Put7, being, the plaintiff himself; Pur2, Moses Opito, a valuation surveyor; and Pnr3. Joseph Musanyrrsa, a resident of Kyanja and caretaker of the suit land. Prrr3 as per his evidence in chief informed court that he met the late Helien Etoori Mashaba in 2003.

She requested for his assistance in managing the suit land and engaged his services in several other tasks around the premises which according to him were later demolished by the 1st defendant. 10

The plaintiff who at times resided in the house had been introduced to Pu3 by the deceased as her son. That following Etoori's death on 31st May, 2011, the plaintiff had requested him to continue with the tasks as entrusted to him by the deceased prior to her demise.

ProT in his unchallenged evidence relied on a number of documents as proof that he was the biological son of the late Etoori. Also presented by him is a copy of the death certificate and additional documents which proved that his mother had died intestate on 31st May, 2011 leaving him as her only biological child; and sole beneficiary therefore under her estate (PExh 1(a)- 1(d)).

PExh 2, is a copy of the family resolution following a meeting held on 3rd June, 2011 at Malera village in Bukedea county, Kumi district where it was agreed that the plaintiff was the only child of the deceased and upon which the family had consented to his nomination as administrator of the estate.

The above was sufficient evidence to court that as a child of the deceased he was therefore entitled to both administer the estate and obtain a share as a

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beneficiary of his late mother's estate, even before letters of administration were granted to him by court.

As proof of ownership of the suit land, the plaintiff tendered in court, PExh 3, certificate of title. The entries on the title indicate clearly that the deceased became registered owner of the suit land on 20th July, 2001, having acquired the same from one Kajumba. Thereafter, no other entries had been made on that title; and indeed no encumbrances registered thereon or any cancellation made.

Following her death, the plaintiff as her biological son/beneficiary had kept the said certificate of title for the suit land in his custody. It is also clear from the evidence of PutS that the plaintiff occasionally resided on the suit land with his late mother in the incomplete structure. 10

PExh 4 is a set of photographs of the storied structure which the deceased had put up on the land (as it appeared prior to the demolition). No other person claimed exclusive physical possession or ownership of the suit premises before or even after the death of the plaintiff's mother.

Upon demolition as illustrated by the photographs exhibited in PExh 77, a complaint was lodged at the Police by the caretaker, PutS vide: SD REF. 18/06/03/2023, dated 10th March 2023.

The plaintiff's evidence was corroborated by that of Pur3, leading to the conclusion that without knowledge and consent of the plaintiff, the 1st defendant had forcefully entered on the land on 6e March, 2023. 20

It was the Pu3's evidence that on that day, during one of the routine checks he had found a group of people (some of whom he was not able to recognize), on the suit land. A tractor and trucks were packed on the land.

It was his further evidence that one land broker whom he knew as Sedu informed him that the land had been sold off by its owner, which claim the

caretaker however refused to believe since he had not been informed about the sale by the plaintiff.

At that point, he had called the plaintiff to inquire about what was taking place. The plaintiff however denied having sold the suit land, upon which the

5 matter was immediately reported to the Police where a case of trespass damage to property was recorded. It was also reported to the area chairman (Kyanja Central Zone), one Mawcjjc who confirmed the said occurrences during the locus visit.

The 1st defendant at some point appeared at the ground with his team and requested Pur3 not to inform the plaintiff about the demolition. During that brief interaction with him, the 1st defendant claimed that he had purchased the land from a certain woman, who as noted by the witness was not the deceased. However, as soon as he learnt that the Police had been alerted, the 1st defendant disappeared, not to be seen again. 10

- The plaintiff's further evidence was that one Sali Bwogi Deogratious who was also seen at the scene, had informed them in the presence of the Police that the 1st defendant presenting himself as the registered proprietor of the suit property had made him an offer to sell it to him, and in the process had also pulled out his phone to show the photograph of the 1st defendant. 15
- An unsigned statement of search dated 6th March, 2023 PExh 5, reflected the names of the 1st defendant as the registered proprietor of the suit land, as at 2nd March, 2023, covering an area of 0.1010 hectares, the same size and area as contained in the deceased's title. 20

PExh 5, is a letter dated 10th March, 2023 by which the divisional CID, Kira Road Police, took up the matter, and made a request to the 2nd defendant to present all transfer instruments, letters of administration, area schedule, among others. 25

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On 9th March, 2023, the firm representing the plaintiff also carried out a search which confirmed that indeed the 1st defendant's names were entered onto the title. (Re., I to PExh 7).

Evidence on record also revealed that the 1st defendant had purportedly entered into a sale agreement on 17th June, 2018, for the suit land, with him as the purchaser and the deceased purportedly as the vendor.

From the contents thereof, the land had purportedly been sold to him at a purchase price of Ugx 50,000,000/=. Neither the LCs nor the plaintiff however appended their signatures as witnesses to that agreement.

The transfer (PExh 9) was purportedly also signed by the late Etoori five years later, on 28th February, 2023. It is important to note that by the time both the sale agreement and transfer were made, the late Etoori had already passed on. PExh 70 is a copy of the caveat lodged on 9th March, 2023 by the plaintiff as a beneficiary under the estate. (PExh 10). The affidavit in support confirmed the assertions made by both PurI and Pus as to how he came to learn about the defendant's actions. 10 15

In conclusion:

In response to the 1st and 2nd issues, the 1st defendant relying on both a fake agreement and a transfer alleged to have been signed by the deceased years after her death, fraudulently and illegally procured the transfer of the suit land into his names. He presented himself as the registered owner of the suit land, purposing to dispose it off quickly to an unsuspecting party.

Fraud was thus also committed by the defendants through the creation of another certificate of title while the duplicate was still in existence, and in the custody of the plaintiff who was the sole beneficiary under the estate of Etoori,

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and rightful owner of the suit property

The certificate of title which was registered on 2nd March, 2023 over the same suit land in the names of the 1st defendant was therefore fraudulently created by the 2nd defendant.

The plaintiff who was in exclusive possession of the suit land both during the life of his mother and after her demise, therefore successfully proved to court that neither him nor his late mother had sold the suit land to the 1st defendant.

It was also clear that the 1st defendant was never in physical possession of the suit land before attempting to dispose it off to a third party. His entry on the suit land was therefore unlawful and unauthorized. He was therefore a trespasser on the suit land.

As such, the transactions made by the defendants from the time when the purported sale was made in 2011 and transfer by the 2nd defendant into the 1st defendant's names made on 2nd March, 2023 were all fraudulent.

They defendants' actions justify the plaintiffs prayer for cancellation of the title ¹⁵ fraudulently created in the 1st defendant's names.

Issue No. 3: Whether the 7th defendant maliciously damaged the plaintiffs property on land comprised in Kuadondo plot 352. Block 795. land at Kaania.

20 Arising from the above unlawful and unauthorized acts by the defendants, the 1st defendant therefore not only committed trespass but also maliciously damaged the plaintiff's property located on the suit property. This resulted in depriving the estate of the late Etoori (of which the plaintiff was the sole beneficiary), of its property.

The plaintiff presented proof of and extent of the demolition/debris in several photographs. (PEXh 11(a)-(h)). The extent of the damage was also confirmed at the locus visit where the area was seen covered by the debris of the demolished structure.

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Par2 Moses Opito presented a valuation and Appraisal report, dated 196 February, 2024, ref . PEXh 72. He testified that the suit land was suitable for residential purposes and assessed its value as Ugx 250,000,000/= with an estimated replacement cost of Ugx 783,632,400/= (Ref. PEXh 12).

5 Put2, further stated in his report that the demolition compromised the building's structural integrity and therefore recommended full demolition. A sum of Ugx 442, 732, 400/= was claimed by the plaintiff as special damages.

Accordingly, and in response to the 3rd issue, this was clear evidence that the 1st defendant had maliciously damaged the plaintiff's property on the suit land.

Issue No. 4: Whether the 2nd defendant breached her statutory duty during the transactions relating to the transfer ¹⁶ of the land comprised in Kyadondo plot 352 block 795, land at Kaania into the 7th defendant,

15 Section 3(1) of the RTA establishes the office of the Registrar of Titles. The law in general terms creates an obligation for the office to follow the correct procedure before issuing land titles. The office must also specifically protect the integrity of the register and ensure that no two entries or titles can be made in respect of the same parcel of land.

20 For a claim of this nature, liability arises where the statutory obligation or prohibition was imposed for the benefit or protection of a particular class of individuals and secondly where the law creates a public right and an individual member of the public suffers particular damage.

Thus as observed in *Arop Simon Peter vs Aturu District Local Government* CA No, 165 of 201-a [2019], a case cited by counsel, the 2nd defendant owed the plaintiff duty to take reasonable steps to ensure the authenticity of the claim by verifying the validity of the documents submitted for the transfer; and guard against fraudulent transactions before entries are made in the registry.

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The plaintiff's evidence on this issue just like the rest, remained unrebutted since the 2^d defendant had filed its defence out of time and therefore lacked a valid defence.

It is trite law that facts as adduced in evidence which are neither denied nor

5 rebutted are presumed to be admitted. Such facts are taken to be unchallenged and truthful. (Tororo District Administration vs Andalalapo Ltd [1994 KALR 126]).

From the facts as highlighted earlier, the 2^d defendant illegally and fraudulently authorized a transfer of the suit land into the names of the 1st defendant before verifying the validity of the transfer documents and before establishing the whereabouts of the duplicate certificate of title which had been issued in 2001 in the names of the deceased.

The 2nd defendant therefore breached her statutory duty during the transactions relating to the transfer of the land comprised in Kgadondo plot

352 block 795, land at Kganja into the 1st defendant name, which resulted in dire consequences by which the estate was unlawfully deprived of its property. 15

Remedies:.

The plaintiff sought the following remedies:

- 1. A declaration that the estate of the late Hellen Etooi is the lawful/ rightful owner of the land comprised in plot 352, block 195 Kganja;
- 2. A declaration that the 1st defendant illegally and fraudulently procured the transfer of the suit land to himself;
- 3. A declaration that the 1st defendant is a trespasser on the suit land;
- 4. An order directing the 2^d defendant to cancel the registration of the 1st defendant on land / certificate of title comprised in plot 352,

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block 795 Kganja and have the certificate of title rectified by substituting and replacing the names of the 1st defendant with those of the late Hellen Etooi;

- 5. A permanent injunction to restrain the 1st defendant| his agents, workmen or anyone acting on the 1st defendant's instructions from interfering/ interfering with plaintiff's use and enjoyment of suit land;
- ¹⁰ 6. an order for quiet possession of the suit land;
- 7. general damages for trespass to land; punitive damages; exemplary damages; interest and costs.

Damaoes:**15 General damages:**

Its trite law that, that damages are direct and probable consequence of the act complained of, also noted in the case of Kannpala District Land Board and George Mitala vs Venansio Banntoegana CA No. 2 of 2007.

Such may be loss of profit, physical inconvenience, mental distress, pain and

suffering, (See also Assit (U) vs. Italio, n Asphalt & Haulage & Anor HCCS No. 1297 of 1999 at page 5).

It is a settled position of the law that the award of general damages is in the discretion of court and is always as the law will presume to be the natural consequence of the defendant's act or omission.

25 Punitive and exemplary damages:

The 1st defendant in this case was faulted for engaging in multiple fraudulent acts which deprived the plaintiff of his right to the property in the suit land; while the 2nd defendant failed to verify the correctness of the information given

to him by the 1st defendant before registration. It was also faulted for its failure to explain

how two seemingly valid titles could subsist concurrently.

Punitive and exemplary damages are an exception to the rule that damages are to compensate the injured person. These are awarded to punish, deter, express

outrage of court at the defendant's egregious, highhanded, malicious vindictive $\mathbf{\$}$ oppressive and/or malicious conduct. (**Ahmed El Termewy vs Hassan Awdi**) and others HCCS No. 95 of 2012).

The law does not provide any particular formula, but the award ought to be a deterrent to such further misconduct; and would squarely lie within the discretion of court.

Failure by the 2nd defendant in this case to safeguard and maintain the integrity of the land register amounted to breach of trust, which warranted the grant of punitive damages against it.

Similarly, the highhandedness displayed by the 1st defendant in destroying property that never belonged to him merits the award of punitive/exemplary damages against him.

Special damages:

In general terms, the object of an award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered. (See:

Fredrick Nsubuga Vs Attorney General S. C. C. A. No. 8 of 1999). 20

Therefore, in the circumstances 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 event of the breach.

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 he or she not suffered the wrong.

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He or she ought to lead evidence or give an indication what damages should be awarded on inquiry as the quantum. (Ongom vs. AG (1979) HCB 267, cited by court in Kamugira vs National Housing & Construction Co. Civil Suit No. 127 of 2009).

- The plaintiff in this instance informed told court that each month he spends \$ $\text{\textsf{S}}$ *Ugx* 700,000/= in rent and other utilities; and sought a total of \$Ugx\$ 9,100,000/= which when added to the *Ugx 433, 632, 400/=* made a total of Ugx 442,732,400/=, assessed as the special damages, to be awarded against the defendants jointly and severally.
- In absence of any evidence to challenge those figures, this court is therefore inclined to grant the prayers sought, in the terms below:

1. A declaration issues that the estate of the late Hellen Etoori under which the plaintiff is the sole beneficiary, is the lawful/rightful owner of the land comprised in plot 352, block 195 Kyanja;

- 2. A declaration issues that the defendants acted in connivance to illegally and fraudulently procure the transfer of the suit land into the names of the \$1st\$ defendant, thus depriving the plaintiff of his beneficial interest under the estate;
- 3. Accordingly the \$1st\$ defendant is a trespasser on the suit land; and an order issues therefore directing the \$2nd\$ defendant to cancel the registration of the \$1\$st defendant on land /certificate of title comprised in plot 352, block 195 Kyanja and have the register and certificate of title rectified by substituting and replacing the names of the \$1\$st defendant with those of the late Hellen Etoori Mashanga;
- 4. A permanent injunction issues to restrain the \$1\$st defendant, his agents, workmen or anyone acting on the \$1\$st defendant's

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instructions from interrupting/interfering with plaintiff's use and enjoyment of suit land;

- 5. an order issues for quiet possession of the suit land to be enjoyed by the plaintiff;

- 6. A compound figure of Ugx \$442,732,400/\$ = is to be paid to the plaintiff jointly by the defendants as special damages, in respect of the estate of the late Hellen Etoori Mushanga;
- 7. A sum of \$Ugx\$ 80,000,000/- to be jointly paid to the plaintiff by the defendants as punitive damages;
- 8. General damages of Ugx 50,000,000/= to be paid by the \$1^{st}\$ defendant;
- 9. Interest of 12 %\$ p.a, to be paid by the defendants in respect to orders 6,7, and 8 above, from the date of delivery of this judgment, till payment is made in full.

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10_. Costs awarded against the defendants

Alexandra Nkonge Rugadya

25 Judge

16th October, 2024

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