

UGANDA / JUDGMENT

Ssempala v Ssempala & Another (Civil Suit 951 of 2022) [2025] UGHCLD 24 (31 January 2025) [2025] UGHCLD 24

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Civil Suit 951 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)**CIVIL SUIT NO. 951 OF 2022****EDITH GRACE SSEMPALA ::::::::::::::::::::::::::::::::::: PLAINTIFF VERSUS****1. PATRICK SSEMPALA****2. GODFREY SSSEMPALA ::::::::::::::::::::::::::::::::::: DEFENDANTS****BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA JUDGEMENT*****Introduction;***

- 1. The Plaintiff brought this suit against the defendants jointly and severally seeking the following remedies;
- i) A declaration that the 2nd defendant is a trespasser on the land comprised in Kyadondo Block 1 Plot 394 and 396
- ii) A declaration that the 2nd defendant has no registerable interest over the suit land.
- iii) A declaration that the 1st defendant has in law no title or registrable interest to pass onto the 2nd defendant without consent of the plaintiff.
- iv) An order that the 2nd defendant delivers up vacant possession of the suit land.

- v) A demolition order of all structures and buildings put up by the 2nd defendant.
- vi) An order that the suit properties be valued to determine the real and forced market value.
- vii) An order that the suit proceeds of sale be shared equally between the two joint proprietors to wit the plaintiff and the 1st defendant.
- viii) Without prejudice to the above, an order that the said properties in Plot 394 and 396 be equally portioned and shared respectively between the plaintiff and the 1st defendant with the exception of the 2nd defendant.
- ix) An order that the 1st defendant pays mesne profits (rental value of the land/house inclusive of the interest at commercial rate.
- x) Interest on mesne profits above at 18% from the date of June 2008 till time of judgement.
- xi) Interest on total mesne profits as at date of judgement, at 20% from date of judgement till payment in full.
- xii) An order that the 2nd defendant pays the mesne profits
- xiii) General damages
- xiv) Exemplary damages
- xv) Costs of the suit.

Background;

- 2. That sometime on the 24th January 1992 the plaintiff via a memorandum of sale purchased the suit land from one Emmanuel L. Ssendawula and at the said time the plaintiff was married to the 1st defendant. In the continuance of the marriage between the plaintiff and 1st defendant things started to turn sour and later the marriage was dissolved by court.
- 3. That in 2011, the plaintiff communicated to the 1st defendant the need to go separate in regard to the suit properties to have them sold and the proceeds equally shared but instead over time the 1st defendant caused the 2nd defendant to take partial possession of the same, hence this suit.

Plaintiff's case;

- 4. Counsel for the plaintiff led evidence of the plaintiff as PW1 through a witness statement where she briefly stated as follows;
- i) That the plaintiff and 1st defendant were initially married however the said marriage came to an end vide petition cause No. 31 of 2001.
- ii) That sometime around the 24th of January 1992, the plaintiff purchased two plots of land comprised in Kyadondo Block 1 Plots 394 and 396 from one Emmanuel Ssendawula.

- iii) That at the time of purchase of the said plots there was a residential house on it.
- iv) That the plaintiff took physical occupation and used the land free from encumbrances.
- v) That in course of time after completion of the purchase, the plaintiff did out of love and affection have the properties registered in the joint names of the plaintiff and 1st defendant.
- vi) The suit land remained in the names of the duo (plaintiff and 1st defendant).
- vii) That in 2011, the plaintiff communicated to the 1st defendant of the need to go separate ways in regards to the properties to have them sold and the proceeds shared.
- viii) That the defendant thereby excluded her from beneficial use of the plots, residence and occupation of the same without due consultation from her and continues to benefit from the plot solely to her exclusion and detriment.
- ix) That the acts of the defendants have caused the plaintiff severe stress, inconvenience and psychological torture for which they seek general damages in the approximate of 30,000,000/
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Defendant's case;

- 5. The 1st defendant solely states that he was formerly married to the plaintiff and the 1st defendant solely provided funds for purchase of the suit property and at the time of purchase of the suit property the plaintiff and the 1st defendant were leaving together in the United States of America and the plaintiff was the Uganda's Ambassador to the United States of America.
- 6. The 1st defendant placed the 2nd defendant in occupation as a caretaker and a licensee since the 1st defendant was one of the registered proprietors to the said land and the 1st defendant has never passed any registrable interest to the 2nd defendant.
- 7. The 2nd defendant has no building structures on the suit land instead the 1st defendant engaged him to renovate and modify the suit property which was in a deplorable and uninhabitable state and the 2nd defendant is not a trespasser as alleged by the plaintiff.

Locus visit;

- 8. Court conducted a locus visit on the 3rd of December 2024 in the presence of both Counsel, the plaintiff and the 2nd defendant where the following observations were made;
- i) The suit property is comprised of a residential house and three servant quarters.
- ii) The main house is occupied by the 2nd defendant and the two servant quarters are occupied by distant relatives and the other servant quarter has a tenant who pays rent to the 2nd defendant.

- iii) The suit property is comprised by a garage run by the 2nd defendant and a police post on the side.
- iv) There is a perimeter wall on the property allegedly built by the 1st defendant.

Representation;

9. At the hearing the plaintiff was represented by Counsel Abbas Bukenya of M/S Kabega, Bogezi and Bukenya Advocates whereas the defendants were represented by Counsel Stanley Kawalya of M/S Kawalya & Co Advocates. Both parties proceeded by way of written submissions which I have considered in the determination of this suit.

Issues for determination;

- *i) Whether the suit discloses a cause of action against the 1st defendant?*
- *ii) Whether the 2nd defendant has any registrable interest in the disputed properties?*
- *iii) Whether the 2nd defendant is a trespasser on the suit property?*
- *iv) Whether in the circumstances court should order a partition or sale of the disputed property?*
- *v) What parties are entitled to the reliefs sought?*

Resolution and determination of the issues;

Issue 1; *Whether the suit discloses a cause of action against the 1st defendant?*

Counsel for the plaintiff's submissions.

- 10. Counsel submitted that the facts speaking to the cause of action against the 1st defendant are set out in paragraphs 4(a) to 4(g) and 5 of the plaint. That the facts relating to the cause of action in the said paragraphs are in line with the requirements stated under order 7 rule 1(e) and (g).
- 11. Counsel referred to the decision in the supreme court case of **Maj. General David Tinyefuza vs Attorney General Constitutional Petition No. 1 of 1997** where the supreme court clarified on what constitutes a cause of action.
- 12. Counsel for the plaintiff submitted that in a nutshell the plaint shows existence of a cause of action as against the 1st defendant and prays that court finds that there exists a cause of action against the 1st defendant.

Submissions by counsel for the defendants;

- 13. Counsel submitted that paragraph 3(a) of the plaint seeks a declaration that the 2nd defendant is a trespasser on the suit land but there is no fact that relates to a cause of action disclosed against the 1st defendant.
- 14. That during the cross examination, PW1 was asked whether she talked to the 1st defendant for the last 10 years and her answer was No, there is no evidence on record of court to prove that the plaintiff wrote to the 1st defendant demanding to be allowed access/ use of the suit property and how then can the plaintiff suddenly claim that she was denied access to the suit property when there was no evidence to support the allegation.
- 15. Counsel submitted that the plaintiff has filed similar suits claiming the suit land against the 1st defendant before, he referred to the decree absolute marked as DEX2 under paragraph 1 where it was stated "that the land and property comprised in KIBUGA Block 1 Plot 394 and 396 at Lubaga currently registered in the names of Patrick Ssempala and Edith Grace Ssempala be transferred into the three issues of the marriage"
- 16. Counsel for the defendant submitted that the instant suit is res judicata and an abuse of court process as stated under section 7 of the civil procedure act which is to the effect that "No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue between the same parties or between the parties under whom they claim litigating under the same title....." the same was stated by court in the decision of Kamunye & others vs the pioneer general Assurance society ltd(1971) EA.

Analysis by court;

- 17. I take note of the submissions made by both counsel and the authorities relied upon.
- 18. As to whether the plaint discloses a cause of action against the 1st defendant or not?
- 19. To fully appreciate whether there exists a cause of action or not, it is apposite to refer to the rules of procedure under Order 4 rule 1(2) which requires that where a plaint is presented in court it must comply with Order 6 and Order 7 of the said rules as far as they apply. Where a suit is proceeding by way of a plaint as its in

the instant suit, the plaint must contain the facts constituting the cause of action and when it arose.

- 20. A cause of action therefore means every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgement.
- 21. The supreme court of Uganda defined a cause of action in the decision of **Attorney General vs Tinyefuza Constitutional Appeal(supra)** the lead judgement of C. J Wambuzi(as he was then) at page 18-19 where he held as follows; "on the authorities referred to us, I find useful, the definition given by Mulla on the Indian code of civil procedure, volume 1 and 14th edition at page 206. The learners author says, a cause of action means every fact

which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgement of the court. In other words, it is a bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on*

but includes all material facts on which it is founded. It does not comprise evidence necessary to the facts but fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to an immediate judgement must be part of the cause of action. It is in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit"

- 22. In agreement with both learned counsel, I wish to restate that to disclose a cause of action, the fact in the plaint must show claim of right as against the defendant, an allegation that the right of the plaintiff has been violated and that the defendant is liable for the said violation. *(See; Auto garage vs Motokov (1971) EA)*
- 23. The question as to whether the plaint discloses a cause of action against the 1st defendant or not will be answered by looking at the plaint and any annexures thereto.
- 24. The plaintiff's suit against the defendants is premised on trespass where the plaint under paragraph 4 states that the plaintiff's cause of action against the defendants jointly and severally arose as follows;
- 25. In paragraph 4 (a) of the plaint it is pleaded that **"sometime on the 24th January 1992 the plaintiff did via a memorandum of sale, purchase land comprised in Kyadondo Block 1 Plot 394 and 396 from a one Emmanuel L. Ssendawula"**
- 26. In paragraph 4(b) it is averred that*,* **"the said land did at the time comprise of rental residential house among other developments thereon"**
- 27. In paragraph 4(c) it is stated that **"in course of time after completion of payment of the consideration and that time the plaintiff was married to the 1st defendant and decided to have the certificate of title registered in the names of the plaintiff and the 1st defendant"**
- 28. Paragraph 4(d) aver that, **"sometime in 2001 the marriage between the plaintiff and 1st defendant got soar and the same was dissolved by court."**
- 29. In paragraph 4(e) it is stated that **"the suit property remained in the names of the plaintiff and 1st defendant to the exclusion of the 2nd defendant and the suit property was not in issue in the divorce petition"**
- 30. Paragraph 4(f) states that **"in 2011, I communicated to the 1 st defendant of the need to go separate in regard to the properties to have them sold and the proceeds equally shared, but instead over time caused the 2nd defendant to take partial possession of the same and who later stated carrying out construction works thereon"**

- 31. Lasty it is pleaded in paragraph 4(g) that **"in disregard of the need to sale and or partition the said property the 1st defendant single handedly let out the said premises in 2012 and has been earning therefrom to the exclusion of the plaintiff and simultaneously restrained the plaintiff from accessing the property she is entitled to thus the suit."**
- 32. From the foregoing averments, it is clear that the plaintiff holds a right in the suit property due to the fact that she is among the registered proprietors to the certificate of title to the suit property, the plaintiff has been deprived of the said right in the suit property because of the actions of the 1st defendant of bringing the 2nd defendant to the suit property.
- 33. The fact that the plaintiff, the 1st defendant are joint owners of the suit property and the act of the 1st defendant of bringing the

2nd defendant onto the suit property without the knowledge and consent of the plaintiff raises a claim against the 1st defendant as joint owners.

- 34. I find that the 1st defendant has done something in violation of the plaintiff's right to use the suit property thus holding the 1st defendant liable for the said violation.
- 35. From the above averments it can be inferred that there exists a bundle of facts that speak to the cause of action against the 1st defendant.
- 36. In the circumstances, I hold that the plaintiff has cause of action against the 1st defendant, the plaint as drawn discloses a cause of action against the 1st defendant.
- 37. As to whether the instant suit is barred by res judicata or not?
- 38. Counsel for the defendants submitted that the plaintiff has filed similar suits claiming the suit land against the defendants. Counsel drew reference to DEX2 a decree absolute that was endorsed by court where it was stated that the land and property comprised in KIBUGA Block 1 Plot 396 at Lubaga currently registered in the names of Patrick Ssempala and Edith Grace

Ssempala be transferred into the names of the three issues of the marriage.

- 39. Further counsel for the defendants referred to DEX3 which is a copy of the application vide Misc. App No.184 of 2012 arising out of divorce cause no.31 of 2007 where the plaintiff sought to amend the decree absolute and stated that the land and property comprised in Kibuga Block 1 Plot 394 included part of matrimonial property to be transferred into the names of Patricia Nakimuli Ssempala, Priscilla Nantege Ssempala and Felicia Rukundo Ssempala the 3 children of the marriage.

- 40. Res judicata bars litigation of a cause of action between the same parties where there is a prior judgement. The blacks law dictionary defined res judicata as **"a matter adjudged, a thing judicially acted upon or decided a thing or a matter settled by judgment of a competent court on the merits which is conclusive as to the rights of the parties and their privies"**
- 41. The civil procedure Act under section 7 is to the effect that **"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between**

parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court"

42. The basis of the rule of res judicata is that an individual should not be vexed twice for the same cause. A person should not be twice vexed in respect of the same contest as to his or her rights and on the other hand, the time of the Courts should not be wasted by trying the same matter several times. (*See; Bank of Uganda*

vs Kaweesi and Ors Misc. Application 1047 of 2023)

- 43. The plea of **"res judicata"** is in its nature an **"estoppel"** against the losing party from again litigating matters involved in previous action but does not have that effect as to matters transpiring subsequently.
- 44. Four factors are considered in determining the validity of a plea of res judicata: (i) was the claim decided in the prior suit the same claim being presented in the current suit? (ii) Was there a final judgment on the merits by a court of competent jurisdiction? (iii) Was the party against whom the plea is asserted a party or in privy

with a party to the prior suit? and (iv) Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue? *(See; Karia and another v. Attorney-General and others [2005] 1 EA 83).*

- 45. As to whether the claim in the previous suit was similar to the claim in the instant suit? Counsel for the defendant relies on the content of DEX2 which is a decree absolute vide Divorce cause No. 31 of 2007 between the plaintiff and 1st defendant where a decree absolute was issued by the chief magistrate court and it was ordered that the land and property comprised in Kibuga Plot 396 at Lubaga currently registered in the names of Patrick Ssempala and Edith Grace be transferred into the names of three children to wit Patricia Nakimuli Ssempala, Pricilla Nantege Ssempala and Felicia Rukundo Ssempala.

- 46. Counsel for the defendant further relied on DEX 3 which is the copy of a notice of motion between the plaintiff and the 1st defendant arising from the said divorce cause where the plaintiff sought for amendment of the decree absolute to include Plot 394 as part of the matrimonial property and be included in the names of the three children.
- 47. The claim in issue in the divorce cause no.31 of 2007 was one that related to what amounted to matrimonial property and to whom it should be registered whereas the claim in the instant suit is one based on an action of trespass to the suit property.
- 48. In my view I do not find that the matters in issue in the said divorce cause are the same as to the ones in issue in the instant suit. Therefore, this condition is not met by counsel for the defendants.
- 49. I do not find it necessary to qualify the other conditions to be met since the claim in the prior application is not the same as the claim being presented in the current suit.
- 50. Therefore issue 1 is resolved in the affirmative.

Issue 2 and 3; whether the 2nd defendant has any registrable interest in the disputed property? if yes whether the 2nd defendant is a trespasser?

- 51. Counsel for the plaintiff submits that the suit property is registered in the names of the plaintiff and the 1st defendant to the exclusion of the 2nd defendant and the 2nd defendant holds no registrable interest in the suit property.
- 52. Counsel for the defendants does not dispute the said fact in his submissions where he states that the 2nd defendant does not appear anywhere on the title and he cannot be said to have a registrable interest in the suit property
- 53. Basing on the submissions of both counsel and the evidence adduced, this court is of a finding that the 2nd defendant holds no registrable interest in the suit property.
- 54. As to whether the 2nd defendant is a trespasser or not?
- 55. Counsel for the plaintiff submitted that the 2nd defendant entered onto the suit property without the consent of the plaintiff who is one of the registered proprietors and trespass to land occurs when there is unlawful entry on the suit land without consent of the owner.
- 56. Counsel for the plaintiff further holds that the plaintiff and the 1st defendant are joint owners and one joint owner cannot consent on behalf of the other unless its expressly stated as stated in the case of **Figueiredo vs Talbot (1962) EA 167**.
- 57. Counsel for the defendants submitted that the 2nd defendant is not a trespasser but rather a licensee who entered onto the land with consent of the 1st defendant. That a licensee is a defence to

an allegation of trespass and there is no law that states that a registered proprietor needs the consent of the other proprietors to grant a license to someone.

Analysis by court;

- 58. According to the Supreme Court in **Justine E. M. N Lutaaya v Stirling Civil Engineering Co. SCCA No 11 of 2002** trespass to land occurs "when a person makes an authorized entry upon land, and thereby interfering, or portends to interfere with another person's possession of that land.
- 59. In order to succeed in an action of trespass, the Court of Appeal in **Sheikh Muhammad Lubowa v Kitara Enterprises Ltd CA No 4 of 1987** observed that one must prove:
 - *a) That the disputed land belonged to the plaintiff*
 - *b) That the defendant had entered upon it, and*
 - *c) That entry was unlawful in that it was made without permission or that the defendant had no claim or right or interest in the disputed land.*
- *60.* In the instant case counsel for the defendants submitted that the 2nd defendant is not a trespasser but rather a licensee occupying the suit land with permission of the 1st defendant.
- *61.* Drawing reference to the certificates of title to the suit property, they indicate the plaintiff and 1st defendant as joint registered proprietors.
- *62.* Section 56 of the registration of titles act cap 240 states that "**Two or more persons who are registered as joint proprietors of land shall be deemed to be entitled to the land as joint tenants; and in all cases where two or more persons ore entitled as tenants in common to undivided shares of or in any land, those persons shall in the absence of any evidence to the contrary be presumed to hold the land in equal shares** *63.* According to *Megarry & Wade: The Law of Real Property, 9th Edition, Stuart Bridge, Elizabeth Cooke and Martin Dixon, Sweet & Maxwell, London, 2019* at paragraph 12-015), where legal title to property is vested in two or more persons, they are presumed to be joint tenants.
- *64.* Section 59 of The Registration of Titles Act (Cap 240), a certificate of title issued under the Act is conclusive evidence of

ownership of land, and shall be received in all courts as evidence of the particulars set forth in the certificate of title.

- *65.* Basing on the evidence adduced before this court and the law, this court is of the finding that the plaintiff and 1st defendant are joint owners and there exists a joint tenancy.
- *66.* The act of the 2nd defendant occupying the suit property with only the consent and knowledge of the 1st defendant would be interfering with the equivalent rights of the plaintiff as a joint tenant. If the 2nd defendant desired to occupy the suit property and use the same for his personal benefit then he ought to have occupied the same with the consent and knowledge of the two joint tenants.

- *67.* The 2nd defendant cannot claim to be a licensee on the suit property without the knowledge and consent of one of the two joint tenants who own the suit property.
- *68.* It appears that the continued possession and occupation of the 2nd defendant on the suit property without the knowledge and consent of the plaintiff has prevented the plaintiff from exercising her rights in the suit property which include unrestricted right of access to the property, right to enjoy the property on equal basis

with the 1st defendant and the right to share any income generated from the jointly owned property.

- *69.* This court is of the finding that the 2nd defendant is a trespasser on the suit property and he is not entitled to any proceeds from the suit property unless with the consent and knowledge of the two joint owners that's the plaintiff and the 1st defendant herein.
- *70.* Therefore the 3rd issue is resolved in the affirmative.

Issue 4; whether in the circumstances the court should order a partition or sale of the disputed property?

- 71. Counsel for the plaintiffs submitted that the plaintiff and 1st defendant are divorced and the suit property is being held in possession of the defendants to the exclusion of the plaintiff who is a joint proprietor with the 1st defendant. That the plaintiff does not benefit from the defendant's use and control of the suit property.
- 72. Counsel for the defendants submitted that the partition or sale of the suit property would be depriving the 1st defendant his right to own property as stated under Article 26 of the 1995 constitution of Uganda and that the suit property being sold or equally

partitioned is legally untenable and it did not necessitate the filing of this suit. If the plaintiff wishes to sell off her share in the suit property all she needs is to sell her share and the 1st defendant is ready and willing to sign off as she does that, however there is absolutely no proof adduced that the plaintiff tried to sell her share and the 1st defendant refused.

Analysis by court;

- 73. The law on co-ownership is to the effect that tenants in common and joint tenants can petition to a court to a partition of the property and the court is asked to divide the property into different lots or section.
- *74.* There are two general types of partitions, the first is a partition in kind, this is the physical division of the land, then the court determines how to divide the property based on ownership interest of each tenant. *(See; Zachary Olum vs Bongomin and 4 Ors Civil Application No. 120 of 2015 before Justice Stephen Mubiru)*

- 75. In the instant suit, it can be inferred from the evidence of the parties that one of the joint tenant does not desire to proceed with

the joint tenancy arrangement anymore and the same can be evidenced from the witness statement of PW1 where she clearly states that she desires to have the suit property sold and proceeds shared between her and the 1st defendant.

- 76. The Registration of Titles Act (Cap 240) does not provide for ways through which a joint tenancy can be severed. This paves way for the application of common law principles and doctrines of equity in severance of the joint tenancy.
- 77. A joint tenancy may be severed in three ways: firstly, an act by any one of the joint tenants can sever his or her interest from the joint tenancy; secondly, a joint-tenancy may be severed by mutual agreement; and thirdly, the course of dealing between the joint tenants may lead to the inevitable conclusion that the interests of the joint tenants is severed *(See; the case of Williams v. Hensman [1861] EWHC Ch J51 70 ER 862)*
- *78.* In the decision of **David Dunbabin v. David Dunbabin [2022] EWHC 241 (Ch), HHJ Paul Matthews, Judge**, while deciding to severe the joint tenancy, held that*: "In my judgment, the evidence satisfies me that there was a course of conduct which showed that one party made it clear to the other that*

one desired that their property should no longer be held jointly but be held in common.

- 79. In the instant case, it is the view of this court that in light of Article 26 of the 1995 constitution of Uganda the court will not force two people to continue owning property as joint tenants when one of them does not want to or wants to give in.
- 80. The remedy of sale or partition will not be granted in situations where there are some unusual circumstances in the case justifying the refusal e.g. partition or sale of family home or where the joint tenant who desires to sale has behaved maliciously, oppressively or with vexatious intent towards the other joint tenant*. (See;*

Zachary olum vs Bongomin and 4 ors supra)

- 81. In the instant suit there is no evidence to show that the plaintiff's conduct or intentions are oppressive but rather the intention of the plaintiff is to end the joint tenancy with the 1st defendant.
- 82. Therefore issue 4 is resolved in the affirmative.

Whether the parties are entitled to the remedies sought?

83. The plaintiff sought the following remedies from court;

- i) A declaration that the 2nd defendant is a trespasser on the land comprised in Kyadondo Block 1 plot 394 and 396
- ii) A declaration that the 2nd defendant has no registerable interest over the suit land.
- iii) A declaration that the 1st defendant has in law no title or registrable interest to pass onto the 2nd defendant without consent of the plaintiff.
- iv) An order that the 2nd defendant delivers up vacant possession of the suit land.
- v) A demolition order of all structures and buildings put up by the 2nd defendant.
- vi) An order that the suit properties be valued to determine the real and forced market value.
- vii) An order that the suit proceeds of sale be shared equally between the two joint proprietors to wit the plaintiff and the 1st defendant.
- viii) Without prejudice to the above, an order that the said properties in plot 394 and 396 be equally partitioned and shared respectively between the plaintiff and the 1st defendant with the exception of the 2nd defendant.
- ix) An order that the 1st defendant pays mesne profits (rental value of the land/house inclusive of the interest at commercial rate.
- x) Interest on mesne profits above at 18% from the date of June 2008 till time of judgement.
- xi) Interest on total mesne profits as at date of judgement, at 20% from date of judgement till payment in full
- xii) An order that the 2nd defendant pays the mesne profits
- xiii) General damages
- xiv) Exemplary damages
- xv) Costs of the suit.
- 84. Having determined the 2nd and 3rd issue in the affirmative, I find and declare that the 2nd defendant is a trespasser on the suit property and in the result, I grant the plaintiff and 1st defendant vacant possession of the suit-land.
- 85. Upon reaching at a finding that the plaintiff does not desire to proceed with the joint tenancy with the 1st defendant, this court orders as follows;
 - i) That the 1st defendant purchases the plaintiff's interest in the suit property upon valuing the same at the current market value.
 - ii) In the alternative, that the suit property be equally partitioned and shared respectively between the plaintiff and the 1st defendant in a manner both parties deem fit.

- iii) Failure of the above, that the suit property be sold at the current market value and the proceeds be shared among the plaintiff and the 1st defendant.

General damages;

- 86. In **Charles Acire v Myaana Engola HCCS No 143 of 1993** it was held that: "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 if he or she had not suffered the wrong"
- 87. The defendant's conduct is thus key to the amount of the general damages awarded. If the trespass was accidental or inadvertent, damages lower. If the trespass was willful, damages are greater. And if the trespass was in between i.e. the result of

the defendant's negligence or indifference, then the damages are in-between as well. *(See; **Adrabo v Madira (Civil Suit No. 0024 of 2013)***

- 88. In the instant suit, the 2nd defendant has been utilizing the suit property with the knowledge and consent of the 1st defendant at the exclusion of the plaintiff who is a registered proprietor to the suit property. counsel for the plaintiff prayed to court for an award of Ughs 30,000,000 as general damages.
- 89. Taking into consideration the facts of this case, this court awards the plaintiff a sum of Ugh shs 7,000,000 as general damages at an interest rate of 10% from the date of judgement till payment in full.

Exemplary damages;

90. The law on punitive damages or exemplary damages is an exception to the rule that damages generally are to compensate the injured person. These are awarded to punish, deter, express outrage of Court at the defendant's egregious, highhanded, malicious, vindictive, oppressive and/or malicious conduct. *(See;*

Ahmed El Termewy v Hassan Awdi & other HCCS No. 95 of 2012)

91. Taking into consideration the facts of the case, the plaintiff was once married to the 1st defendant and the 2nd defendant is a son to the 1st defendant. Therefore, this court finds no reason to make an award of exemplary damages against the defendants.

Mesne Profits against the defendants;

- *92.* Section 2 of the Civil Procedure Act defines 'mesne profits' as "those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received there from, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."

- 93. Mesne profits are due from the defendants to the plaintiff in the instant case as much as court made a finding that the 2nd defendant was in wrongful possession of the suit property and one tenant in the servant quarters remitted monthly rent to the 2nd defendant, however counsel for the plaintiff did not lead evidence to the same.
- 94. The pleadings of the plaintiff should have pleaded the said facts and evidence that speak to when the 2nd defendant started collecting the said rent, how much is the monthly rent payment and for how long he has been collecting the said rent. The said facts would form the basis for calculating mesne profits to enable court reach a finding.
- 95. Therefore, this court is reluctant to make an order as to mesne profits against the defendants.
- 96. On the issue of Cost; Costs follow the event and the successful party is entitled to cost as per the provisions of Section 27 of the Civil Procedure Act. **Section 27 of the Civil Procedure Act states; ***"Provided that the costs of any action, cause or other matter shall follow the event unless the Court or the judge for good reason otherwise orders"*
- 97. The plaintiff being the successful party in the instant suit hereby entitled to the costs of the suit against the defendants.
- 98. In the result therefore, judgement is entered for the plaintiff against the defendants and the instant suit succeeds with the following terms;
- i) That the 2nd defendant is a trespasser on the suit land comprised in Kyadondo Block 1 Plot 394 and 396.
- ii) That first priority is given to the 1st defendant to purchase the plaintiff's interest in the suit property upon valuing the same at the current market value.
- iii) In the alternative, the suit property be equally partitioned and shared respectively between the plaintiff and the 1st defendant in a manner both parties deem fit.
- iv) Failure of the above, the suit property be sold at the current market value and the proceeds be shared amongst the plaintiff and the 1st defendant.
- v) An award of Ughs 7,000,000 as general damages at an interest rate of 10% from the date of judgement till payment in full.
- vi) Costs of the suit awarded to the plaintiff against the defendants.

I SO ORDER.

NALUZZE AISHA BATALA

JUDGE

31st/01/2025

Delivered electronically via ECCMIS on the 31st day of January

2025.

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