THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL APPEAL NO. HCT-12-CV-CA-0034-2015
(ARISING FROM LAND SUIT NO. 0028 OF 2008)

BENEDICTO KATONGOLE alias OMUKWENDA KATONGOLE ::::::::: APPELLANT

VERSUS

KIBAALE DISTRICT COUNCIL::RESPONDENT

JUDGMENT BY JUSTICE GADENYA PAUL WOLIMBWA

The Appellant sued the Respondent for a declaration that he is the rightful owner of a kibanja at Bibimbo, Bwamiramira Sub-County in Kibaale District in the Chief Magistrate Court at Kibaale. He sought for a declaration that the suit land belongs to him and that the Respondent is a trespasser, an eviction order, permanent injunction, special and general damages, interest and costs of the suit.

Brief Background

The facts as found by the court below were that the Appellant's had lived on the suit land undisturbed by the Respondent since 1973 having been given the suit land by PW2 who is his father. That the Respondent without his consent, trespassed on the suit land, destroyed his developments, built houses thereon and claimed that the suit land belonged to them. PW2 stated that as a Sub parish chief, he had power to allocate land to the Appellant and any other person as the land belonged to no one.

The Appellant reported to the Local Council Offices who were brought to testify and stated that the suit land was for the Appellant as he had stayed on it since 1973. The local council chiefs wrote a letter to the same confirming that that the Appellant was the owner of the suit land.

The Respondent stated that the suit land belonged to the district and that the Uganda Land Commission was holding it in trust for them. They also claimed that they have title to the suit land and counterclaimed stating that they were the legal owners of the 49 acres as belonging to

Bwamiramira and that the Appellant without their consent entered on their land and planted trees thereon.

Evidence adduced by the Parties

PW1 testified that he has lived in Kibingo village since 1973, on the untitled land measuring 18 acres, which was given to him by his father, Karoli. He further testified that neither Bwamiramira Sub-County nor Bunyoro Kingdom has ever claimed for this land. That before Kibaale District was created Bwamiramura Sub-County was in existence and had never tried to chase him from this land. He sued the defendant because they trespassed on his land.

He further testified that in a certain year the defendant's officials came to his land and damaged his property, erected buildings thereon which he protested but they continued. This was around 1994. That later on the defendant planted thereon pine trees around 1999 and they covered one and half to two acres. He reported to police but they did not help him.

He further testified that the LC1 LCII wrote a letter confirming that the land belong to him and upon receiving this document, the defendant stopped further trespass. That Respondent had built a 5-structure building and pine trees and they had trespassed on about 4 acres. He contacted the District officials like the CAO, Chairman LCV and lands officer. The lands officer one Magezi wrote a letter confirming that the land was his.

He further testified that he received a communication from the Respondent to vacate the land. The letter was authored by CAO Kibaale on 25/9/2003. He was later arrested and taken to the local administration police, then to court and was charged with the offence of trespass and malicious damage to the pine tree plantation but was acquitted by court.

He further told court that he had property on the suit land before the Respondent's official's trespassed including coffee, guava, mangoes and pineapples that were all destroyed. They destroyed 65 plants of coffee, 13 guava plants, 50 pineapple plants, 20 mango trees. He estimated coffee at 20 bags per year, guava plants at UGX. 10,000 as well as each pineapple and mangoes. A photograph was taken the same week (PEX3). That the Respondent had trespassed on only 4

acres and the rest of the land was being used by him and confirmed that there were other people owning plots and are still on them.

He prayed that the court declares him as the owner of the land and orders the Respondent to vacate it. He prayed for general damages and costs of the case.

During cross-examination, the Appellant testified that he got the suit land from his father but he could not tell how his father acquired the land. He did not know whether the land had a land title. That he allowed one Nanyaka to grow crops on the land and he was the Chairman LCV that time. PW2 testified that the Appellant is his son and that the district of Kibaale had trespassed on his land. He testified that the land is located at Kiganza village near the Sub-County of Bwamiramura. He testified that he gave the Appellant the suit land when he was the Sub parish chief as he had powers to allocate land. The boundaries of the suit land where described as stretching from a swamp called Nyabijabala on the road to Kagadi. That it borders with a road to Kigaza, then with Jerome Sengozi and touches the swamp of Nyabijabala from another side. He testified that he gave him the land, which he started using to date.

He further testified that since 1973, no one had challenged him save the District, which constructed these offices. He further testified that in 1973 Kibaale District did not exist as it was created around 1994 and before then, Kibaale was Buyanja County and the land fell in Bwamiramura Sub-County. That when Kibaale district was created they told the Appellant that the land in issue was theirs, they laid foundations and constructed houses and destroyed his crops.
In cross-examination, he stated that he lived on the suit land from 1973 and gave it to him in 1973. He confirmed that as the Sub-parish chief, he had powers to allocate land though no one had instructed him but had been taught to have such powers. That the land belonged to no one as it was simply a bush.

PW3 testified that he knows the Appellant who lives in Kigaza village since he owns land there and a home. He confirmed the boundaries of the suit land and stated that knows the Appellant as person who owned land in his area being the Chairperson LC1 of kigaza village. He approached him about his destroyed things including coffee, avocado, jackfruits and guava and told him that

the district officials of Kibaale had destroyed them. He was given a letter confirming him as the owner of the land however; they had not verified the district's claim. He further testified that the suit land does not belong to Bwamiramura Sub-County and it has never claimed it nor Bunyoro kingdom. He confirmed that coffee, jackfruits, avocado and guava trees had been destroyed and that before Kibaale came into being no one had claimed this land

In cross-examination, he testified that he could not tell the many trees that had been destroyed, as they were not counted.

PW4 the LC1 Chairman Kibombo village testified that the plaintiff owns land in the region with homes and gardens. He described the boundaries of the disputed land and confirmed that the Respondent had destroyed his things. That around 1990 – 1994 is when the district officials trespassed on the suit land and destroyed property belonging to the Appellant. He further stated that the suit land belongs to the Appellant, who was born it.

DW1 and DW2 the Respondent representatives testified that in 1995, the District got aid from Ireland for developing Kibaale district and since there was a problem with accommodation, they decided to construct staff houses for their officers and two houses for co-ordination of Irish Aid Staff and four houses were constructed on the suit land. The site was a bush and a virgin piece of land, it was on hill and on top, there was a garden of coffee trees. The first building at that garden covered 100 feet and put a hedge separating the house from the coffee plantation. The construction took place outside the cultivated area and there were no fruit trees on the land where the construction took place.

He further testified that before construction started they knew it was their land and it still was their land. That it formerly belonged to Buyaga (Isaza) County and that when there was abolition of the Kingdom the land vested in the Uganda Land Commission and the District is a beneficiary. Through the construction, there was no complaint from anyone. That apart from the district staff houses; it planted pine in the area. Stated further that at the moment, the chairperson, District Health Officer, Deputy CAO and a Warder Officer stay in the houses on the suit land.

DW1 in cross-examination confirmed that he was on the construction team as supervisor, which started in 1995 and at that time did not know the owner of the coffee plantation on the suit land. He testified that the respondent has a certificate of title for that land in the names of Buyaga County.

He further confirmed that he could not tell how the district acquired the suit land and stated that the district was formed in 1990 and that is when they started claiming the land. According to this witness, the land belongs to Bwamiramura Sub-County, which is part of Kibaale District. He said that to the best of his knowledge, opening of the boundaries of the district was carried out at the instruction of Kyaligaonza, the Deputy Chief Administrative Officer. Although DW1, did not know the nature of certificate of title the district had he insisted that the suit land belongs to Kibaale district though currently belongs to Bunyoro kingdom. He could not tell what was on the suit land before it was cleared.

DW2 confirmed that the suit land belongs to the Respondent and that when the staff quarters were being erected, the Appellant was not consulted because the land never belonged to him. He said that the district has proof of ownership of the land by the district. According to him this land this land originally belonged to the Kingdom and then it was reverted to Ugandan Land Commission, which is the custodian of all government land but that the land belongs to Kibaale, and the Land Commission is its custodian. He confirmed that the land was now in the names of Bunyoro Kitara Kingdom upon return of their property.

Evidence at the locus in quo

The parties confirmed the evidence given in court and were cross-examined.

Judgment of the lower court.

The trial magistrate dismissed the claim by the Appellant and gave judgment in favour of the Respondent. The Appellant was dissatisfied with the decision of the lower court and filed this appeal.

Grounds of the Appeal

1. The learned trial chief magistrate erred in law and fact when he failed to properly evaluate the evidence on record and thus came to wrong conclusions.
2. The learned trial chief magistrate erred in law and fact when he found and held that;
    a. The plaintiff is not a bona fide occupant
    b. The land occupied by the Defendant in 1994 was public land and it never belonged to the plaintiff
    c. The defendant is not a trespasser on the land in issue
    d. The plaintiff had no developments nor interest or right over the suit land
    e. The plaintiff's case had no merit
3. The learned trial magistrate erred in law and fact when he failed to dismiss the Defendant's counter claim with costs to the plaintiff.

He asked court to allow this appeal with costs here and in the court below, set aside the judgment and orders of the Chief Magistrate and substitute them with orders granting his prayers set out in the original claim.

Representations

Mr. Andrew Kahuma represented the Appellant and Mr. Kamugisha, represented the Respondent.

Consideration of the Appeal

Both counsel proceeded by way of written submissions and argued grounds 1 and 2 together.

Arguments for the Appellant

Learned Counsel Kahuma for the Appellant submitted that the Appellant's evidence of ownership was overwhelming, as it was not challenged by the Respondent. He further stated that the Respondent failed to prove that the suit land belonged to Bwamiramira Sub-County or Buyanja County or Bunyoro Kingdom or Uganda Land Commission or that it was a legal holder of 49 acres belonging to Bwamiramira Sub-County as pleaded in paragraphs 4, 5, 5A of its amended defense and paragraph 1 of the counterclaim.

Counsel for the Appellant further pointed out that at the locus, the Respondent could not prove its ownership of the suit land and neither could they prove that the Appellant had acquired the same

fraudulently which even though it were proved, it would not have any effect on his interest having acquired the suit land from his father.

The Learned counsel for the Appellant further stated that the fact that they acquitted the Appellant of criminal charges brought against him by the Respondent showed that the Respondent could not prove ownership of the suit land.

During his further submissions, the counsel for the Appellant stated that the Appellant produced evidence of a photograph (Exh. P3) which showed the remnants of his destroyed fruit trees like guava, and coffee trees, which the trial magistrate admitted in his judgment to have seen. He submitted that it was an indication that he was in occupation of the land as claimed in his evidence.

Further to the above, counsel for the Appellant submitted that the Respondent deviated from their evidence since DW1 and DW2 could not clearly point out if the land belonged to Bwamiramira Sub-County and Buyanja County as stated in the written statement of defense or that it belonged to Bunyoro Kingdom. Further submitted that no one was called from Bwamiramira Sub-County or Buyanga County or Bunyoro Kingdom or Uganda Land Commission to testify about the ownership of the suit land. That no one from Bunyoro Kingdom or Bwamiramira Sub-County or Buyanja County was claiming this land from the Appellant.

That the trial chief magistrate rightly found on page 11 of the record that the Respondent's entry on the land was not a challenge of the Appellant's use and occupation of the land envisaged under Article 29(2) of the Constitution since it is neither the registered owner nor the agent of the registered owner. That there is no evidence of proof of registration of this land in the names of anybody as no title was produced in court. That there is no evidence as to how the Respondent acquired the suit land as opposed to the Appellant who elaborately testified in court on how and when he acquired the suit land.

Learned counsel submitted that the trial court should have found that the Appellant was a bona fide occupant of the suit land under Article 237 (8) with security of tenure. He defined a Bona fide occupant as stated under Section 29 (2) of the Land Act. He further submitted that by 1994 when the Respondent began laying claims of ownership on the suit land, the Appellant had been there,

unchallenged for 21 years and therefore was protected by the above provision of the law. That he could not be evicted nor could the land be taken away from him by any authority without compensation.

He further stated that if the land belongs to the Appellant, yet the Respondent entered upon it without his consent, destroyed his crops and built houses which it occupies to date, there is no doubt that the Respondent is the one trespassing on the Appellant's land. That the Respondent does not dispute the fact of entering the suit land, erecting thereon houses and planting pine trees

He defined trespass to mean entering privately owned property or land without permission. He cited the case of **Busiro Coffee Farmers & Dealers Ltd –v- Tom Kayongo & 2 others HCCS 532/1992 Byamugisha, J** held that :

> **".....trespass to land is unlawful interference with another person's right to land, the person bringing the action must be in actual possession or entitled to its possession at the time of filing the action. Possession in its primary sense is the visible possibility of exercising physical control coupled with intention of doing so either against the entire world or against all except perhaps certain people."**

In the case of **Fowler vs Lanning (1959) 1 QB 426 Court** held that any entry upon another's land is tortuous whether the entrant knows that he is trespassing.

He further submitted that the Appellant was in possession of the suit land and the entry thereon by the Respondent, no doubt constituted trespass.

Learned counsel criticized the trial magistrate for invoking the Land Reform Decree to dismiss the Appellant's case. First, the Appellant was not claiming compensation from government for his improvements on the land. That secondly, the Appellant was not claiming a lease interest in the land as insinuated by the trial magistrate. That he was not claiming to be the registered proprietor of the suit land. Thirdly, the Land Reform Decree did not authorize eviction of one occupant by another simply because the person evicted did not comply with the provisions of the law. The Appellant was not evicted by Uganda Land Commission and the Respondent did not plead let

alone adduce evidence that it was acting on behalf of the ULC. His claim was for a kibanja, which was trespassed upon by the Respondent.

Finally, he stated that if the trial chief magistrate had evaluated the evidence on record properly, he would have concluded that the Appellant proved, on the balance of probability, that the suit land belonged to the Appellant and that he is a bona fide occupant of the suit land, had developments thereon and interest therein.

Arguments for the Respondent

Learned Counsel for the Respondent contended that the learned chief magistrate properly evaluated the evidence on record and arrived at a right/correct conclusion.

Counsel for the Respondent submitted that the Respondent testified that the suit land where the Respondent constructed houses for its staff was a bush and a virgin piece of land. That there were no fruit trees on the suit land. He further submitted that the suit land belongs to the Respondent but Uganda land commission was holding it in trust though the certificate is currently in the names of the kingdom of Bunyoro Kitara. That certificate of title was tendered in but unfortunately, this vital piece of evidence was deliberately left out of the record of appeal because it was not in favor of the Appellant. He attached is a copy of the certificate of title.

Counsel further stated that the certificate of title clearly does not show that the suit land belongs to the Appellant. That it was admitted and was never challenged by the Appellant that it was procured fraudulently.

He further submitted that the Appellant's claim is premised on his evidence that the suit land was given to him by PW2 in 1973 the law in place was the Land Reform Decree of 1975. That in 1973 by virtue of the said Decree, all land in Uganda was public land and vested in the commission. The effect of the above law was that PW2 could not legally give out the suit land to the Appellant as if it was his personal property.

Learned counsel further submitted that that the appellant had no rights of ownership to the suit land and cannot either be compensated for the trees destroyed because DW1 stated that at the time of constructing the staff houses for the District, the suit land was a bush and was virgin land with no developments. That this in effect meant that the Appellant was not in occupation of the suit land and therefore cannot bring an action in trespass.

Further to that, counsel submitted that for one to bring an action in trespass, he or she must be in occupation of the suit land. That the Appellant cannot claim rights of a bona fide occupant reason being that the rights of a bona fide occupant are provided for in the 1995 constitution as amended and the 1998 Land Act as amended. The above laws were not in place in 1994.

Finally, counsel for the Respondent submitted that the learned Chief Magistrate properly evaluated the evidence and came to the right conclusion stating that the suit land did not belong to the Appellant and that he was not a bona fide occupant with no developments on the suit land and hence concluded that the Appellant's case lacked merit.

Consideration of the Appeal

The duty of the 1st appellate court is to re-evaluate evidence, subjecting it to strict scrutiny as if it were the trial court but mindful that the court has no opportunity to watch the demeanor of the witnesses. The above position of the law was re-echoed in the case of **Banco Arabe Espanol Vs Bank of Uganda SCCA No. 8 of 1998**, where it was held that as a first appellate court, the court has power and ultimate duty to re-evaluate the evidence before the trial court, subject to fresh scrutiny and come to its own conclusion, while doing so, the court should be mindful that unlike the trial court, it doesn't have the privilege of physically observing the witness testify, their response to one's questions and observing their demeanor.

Section 101(1) of the Evidence Act places the onus to prove his interest in the suit land on the Appellant. This burden must be discharged on a balance of probabilities.

Learned Counsel Kahuma for the Appellant submitted that the trial court should have found him to be a bona fide occupant as stated under Section 29 (2) of the Land Act since he had stayed on

the land unchallenged for 21 years and hence protected under the law. That the trial magistrate was wrong in invoking the Land Reform Decree in resolving the issue.

Counsel for the Respondent submitted that the Appellant's claim is premised on the fact that he was given the suit land by PW2 in 1973 however that the law in place was the Land Reform Decree of 1975 where all land was declared to be public land vested in the commission. That PW2 could not legally give out the suit land to the Appellant as if it was his personal property.

In his judgment, the trial magistrate held that the land occupied by the defendant in 1994 was public land and it never belonged to the plaintiff.

Section 29(2) of the Land Act stipulates as follows:-

> **"bona fide occupant means a person who before the coming into force of the constitution had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more."**

In the case of **Jacob Mutabazi vs Seventh Day Adventist Church and another Civil Suit No. 054 of 2009**, it was observed that the use of the word bona fide is intended to restrict this provision to occupants of land that have extensively utilized such land, lived on it for the prescribed period of time, all with the knowledge of the registered proprietor of such land, and have a semblance of ownership over land.

It is necessary that the appellant proves that he had occupied the suit land unchallenged for twelve years before the coming into force of the Constitution.

The evidence on record is that the appellant had been in occupation of the disputed land since 1973 when his father (PW2) allocated it to him until around 1994 when the respondent started claiming the suit land. This would mean he had stayed on the said land for twenty-one years without being challenged by the registered owner in regards to ownership.

The Respondent have attached a certificate of title in the names of Bunyoro Kingdom however no witness was brought to satisfy court that the same belonged to the Respondent since the name on the title is different from the Appellant.

In order to qualify as a bona fide occupant, the Court of Appeal set out the conditions to satisfy in the case of **Kalya & 2 others vs Macekenyu Civil Appeal No. 82 of 2012 that is;**

1) **Must have occupied and utilized the land in issue for 12 or more years before the coming into force of the Constitution on 8th October 1995 unchallenged by the registered owner or**
2) **Must have developed the land in issue unchallenged by the registered owner for 12 or more years before 8th October 1995, when the Constitution came into force.**
3) **Must have acquired interest of a person who satisfied the above conditions.**

In the present case, it is not disputed that the Appellant was on the suit land since 1973 unchallenged until 1994 when the Respondent started claiming ownership. The fact that he had occupied the land for more than 12 years, he had developed it unchallenged by the registered owner, makes him a bona fide occupant of the suit land. The trial magistrate therefore erred when he relied on the Land Reform Decree considering that the law came into force in 1975 and did not apply retrospectively. It should also be noted that this matter was filed in 2008 when the Constitution and the Land Act where already enacted and hence the trial magistrate erred by not applying the said laws.

I will now consider whether the Respondent trespassed on the suit land. The Appellant claimed that the Respondent upon entering on the suit land, they destroyed his crops and built houses thereon hence trespassing on the suit land.

The **Halsbury's Laws of England 3rd Edition vol.38** defines Trespass as… **"Trespass to land is unauthorized entry upon land".**

Also in the case of **Justine E.M.N. Lutaaya Vs Stirling Civil Engineering company civil appeal No. 11/2002(**SC); Defined trespass to land as follows

Trespass to land occurs when a person makes an unauthorized entry upon land, and thereby interferes or pretends to interfere with another person's lawful possession of that land.

In the present case, the Appellant adduced evidence of several witnesses to prove that he had been in occupation of the suit land since 1973 and that at all material times has been in possession of the suit land carrying on various activities of planting coffee, guavas, mangoes and pineapples.

The appellant was also able to demonstrate that the Respondent officials came on the suit and built houses thereon on about 4 acres and destroyed his property. He produced proof of the destroyed property including 65 plants of coffee, 13 guava plants, 50 pineapple plants and 20 mango trees through PEX3.

The total sum of evidence leaves no doubt that the respondent's activities on the suit land amounted in law to the tort of trespass.

I have found that the Appellant is a bonafide occupant of the suit land and that the Respondent trespassed thereon. Ordinarily, I would have ordered for the eviction of the Respondent from the suit land but I note that the Respondent has built public infrastructure on the suit land which is so important for the wellbeing of all in Kibale including the Appellant. For this reason, the public infrastructure will remain and the district will remain on the suit land on condition that the Respondent compensates the Appellant for the suit land, which was described as being approximately four acres. The Government Valuer, shall at the expense of the Respondent value the land and the Respondent shall pay the Appellant this value to keep possession of the suit land.

The last ground raised is that the trial magistrate erred in law and fact when he failed to dismiss the Defendant's counter claim with costs to the plaintiff.

Counsel for the Appellant submitted that the trial magistrate in regards to the counter claim concluded that there was no evidence to support it however; he did not dismiss it with costs to the Appellant, as he ought to have done. He further stated that costs follow the event unless there are clear reasons, which must be recorded, for denying a successful party costs of the suit. If the trial

magistrate awarded half of the costs to the suit, there was no reason to deny the Appellant costs of the failed counter claim.

He cited the cases of **Behange v School Outfitters (U) Ltd [2000] 1 EA 20 and SDV Transami (U) Ltd –v- Nsibambi Enterprises** Court of Appeal of Uganda Civil Appeal No. 59 of 2006, where Kikonyogo DCJ held "thus, where a trial court has exercised its discretion on costs, an appellate court should not interfere unless the discretion has been exercised injudiciously or on wrong principles. However, where the court does not give reasons reason for its decision, the Appellate court will interfere with its discretion if it is satisfied that the order is wrong. The appellate court will also interfere with the discretion of the lower court, where reasons are given but reasons do not constitute "good reason" within the meaning of the rule. In the instant case the trial judge having allowed the Respondent's claim declined to award it full costs…"

Learned counsel for the Appellant invited this court to interfere and dismiss the Respondent's counter claim with costs.
Learned counsel for the Respondent submitted in regards to this ground that it would defeat the purpose of justice to dismiss the counter claim with costs to the Appellant, when the Appellant failed on a balance of probabilities to prove ownership of the suit land. He asked the court to re-evaluate the evidence, exercise its discretion and come to its own conclusion. He cited the case of **Fredrick J.K. Zaabwe vs Orient Bank Ltd & Others.** He prayed that the appeal be dismissed with costs to the Respondent.

Section 27(2) of the Civil Procedure Act, provides that costs of any action shall follow the event unless the court or judge shall for good reason otherwise order.

In the instant case, the trial magistrate did not dismiss the counterclaim with costs as filed by the Respondent and neither did he give reasons for not doing so. Looking at the record of appeal, the Appellant filed a reply to the written statement of defense and counterclaim and the fact that the argued the counterclaim, it was only fair that the trial magistrate considers the costs in regards to the same.

In **Uganda Petroleum Co. Ltd vs KCCA HCCS NO.250 of 2015,** it was held inter alia; that a successful litigant ought to be fairly reimbursed for costs he has had to incur.

From the foregoing, I award costs to the Appellant on the counter claim in the lower court as per Section 27 of the Civil Procedure Act.

As per the plaint, the Appellant made the following prayers;

i. A declaration that the he is the rightful owner of the suit land
ii. A permanent injunction restraining the defendant, its servants and agents from encroaching and trespassing on the Plaintiff's land.
iii. A permanent injunction restraining the defendant, its servants and agents from claiming the plaintiff's land
iv. An order of special damages as pleaded in paragraph 6 above
v. An order for the defendant to pay the plaintiff punitive, exemplary, aggravated and general damages
vi. An eviction order against the defendant
vii. Interest on (iv) above at court rate from the date of the judgment until payment in full.
viii. Costs of the suit
ix. Any other relief as court may deem fit.

General damages.

The position of the law is that the award of general damages is in the discretion of the court, and as always, the law will presume to be the natural consequence of the Appellant's act or omission.

See: **James Fredrick Nsubuga v Attorney General, H.C.C.S No. 13 of 1993**

In the case of **Robert Cuossens v. Attorney General, S.C.C.A. NAO. 08 OF 1999** it was held that:-

> **"The object of the award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered….."**

The evidence on record shows that the Respondent trespassed on 4 acres of the Appellant's land since 1994 until now and has denied the Appellant free use of the suit land. Putting into consideration all those factors, I find that that an award of twenty million shillings is sufficient general damages and I award him.

In regards to the interest on the general damages, I find 8% interest from the date of this judgment in the lower court until payment in full.

Special damages

Special damages do not follow in the ordinary course. They are exceptional in their character and therefore, must be claimed specifically and proved strictly. Special damages relate to past pecuniary loss calculated at the date of trial.

From the record the trial chief magistrate found that there was no proof that the Appellant had any developments on the land by 1994 to warrant any compensation for his improvements or developments. Counsel for the appellant stated that the Respondent entered upon the suit land without his consent, destroyed his crops and built houses, which it occupies to date. PW1 testified that the Respondent destroyed 65 plants of coffee, 13 guava plants, 50 pineapple plants and 20 mango trees. He estimated coffee at 20 bags per year, guava plants at UGX.10, 000 as well as each pineapple and mangoes. A photograph was taken the same week (PEX3).

From the foregoing evidence, while there is sufficient evidence that the appellant's property was destroyed by the respondent however the estimations are speculative and exaggerated in nature. No evaluation officer was brought to sufficiently tell court the extent of the damage in regards to the property. I am therefore unable to award him special damages for the destroyed properties for lack of credible evidence.

Exemplary and punitive damages

These damages represent a sum of money of a penal nature in addition to the compensatory damages given for the pecuniary or physical and mental suffering. I decline to grant these damages.

Aggravated damages

The general principle on aggravated damages has been stated by Katureebe, JSC, as he was then in **Zaabwe v Orient Bank and Others 17/2007[2008] UGSC 1(22nd January 2008);** where he stated that:

> **".....with aggravated damages...it is well established that when damages are at large and a court is making a general award, it may take into account factors such as**

malice or arrogance on the part of the defendant and this injury suffered by the plaintiff, as, for example, by causing him humiliation or distress. Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature…"

Therefore, in determining whether the applicant is entitled to aggravated damages, there is need to look at the conduct of the Respondent in this case. The appellant did not adduce sufficient evidence to demonstrate that the he was humiliated by the Respondent in regards to the suit land.

The court declines to grant aggravated damages to the appellant.

In conclusion, the appeal is allowed with the following orders;

a) The appellant is hereby declared a bonafide occupant of the suit land.
b) The Respondent will not be evicted from the land as it has built social infrastructure on the land for the benefit of the public. However, the Respondent shall compensate the Appellant for the value of land it is occupying. The Chief Government Valuer, shall determine the appropriate value of this land at the expense of the Respondent, which the Respondent shall pay to the Appellant as compensation. This compensation shall form part of the decree of this judgment.
c) The Appellant is awarded general damages of UGX. 20,000,000, which attract interest of 12% p.a from the date of this judgment till payment in full.
d) The Appellant is awarded the costs of the counter claim in the lower court.
e) The appellant is awarded costs of this appeal and those of the lower court.

Gadenya Paul Wolimbwa.

JUDGE

17th June 2020

The Registry of the court shall email this decision to the parties on 18th June 2020.

Gadenya Paul Wolimbwa.

JUDGE

17th June 2020