Final Copy



# THE REPUBLIC OF UGANDA

# IN THE SUPREME COURT OF UGANDA

## AT MENGO

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

CIVIL APPEAL NO. 7 OF 1999

B E T W E E N

JOY TUMUSHABE AND ANOTHER >>>>>>>>>>>>>APPELLANTS

A N D

M/S ANGLO-AFRICAN LTD AND ANOTHER >>>>>RESPONDENTS

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

## *JUDGMENT OF KANYEIHAMBA, J.S.C.*

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

The following appear to be the undisputed facts and background leading to this appeal. Plot No. 45 Ben Kiwanuka Street in Kampala

comprises of shop premises downstairs and a residential flat upstairs. Before the expulsion of Asians by the Military regime in the 1970s, the premises which I will hereafter refer to as the suit premises were owned by two Asians, a Mr. Hirji and a Mr: Laximides Dalia. After the expulsion, the suit premises were vested in and managed by the Departed Asians Property Custodian Board.

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

On 28th April, 1993, Laximides Dalia obtained repossession of the suit premises and as he lived outside Uganda, he appointed M/s Anglo African Limited, the 1st respondent whose Managing Director was one Rennie Richardson, to manage the suit premises. Dalia's letter written on 15/3/93 and appointing Anglo African Limited as Managers of the suit premises was copied to the tenants in the suit premises and it informed them that the new managers of the property who were to manage it for a period of twelve months only would have authority not only to manage but also to collect rent and deal with any matter pertaining to the management of the property.

Following repossession, the Departed Asians Property Custodian Board notified all the tenants in the premises and advised them to deal with the owner who had now become the landlord instead of the Board.

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

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

appellants had resisted the authority of the lawful owners and refused to pay rent, they had become trespassers and the owners or their agents were entitled to distress for rent and evict the appellants from the suit premises.

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

The Memorandum of Appeal contains five grounds framed as follows :-

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

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

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

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

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

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

(e) The Appellants were not entitled to damages.

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

4- The learned justices of Appeal erred in law and fact when they failed to consider the admissibility of Exhibit D1 as ground of Appeal.

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

Mr. Babigumira argued grounds 1,2, and 3 together. He first submitted that the appellants who had been lawful tenants of the Departed Asians Property Custodian Board had refused to accept Mr. Laximidas Dalia as their landlord or owner of the suit property. Indeed, on this very matter, the appellants had gotten a High Court temporary injuction against the alleged owner albeit that the injuction was later vacated. In consequence, neither Mr. Laximidas Dalia nor anyone else purporting to act on his behalf had authority to distress for rent against or evict the appellants from the suit premises. Counsel cited Souza Figueiredo & Co. Ltd. V. George & Others, (1959), E.A. 756, in support of the proposition that there must be a landlord/tenant relationship before a landlord can exercise his powers under the law. In holding that this relationship existed between Mr. Laximides Dalia and the appellants, the learned Principal Judge had erred in both fact and law and, in confirming the decision of the trial court, the Court of Appeal had, as a first appellate court, failed to reevaluate the evidence. Mr. Babigumira further submitted that the persons who are by law authorised to distress for rent are either the actual owners of the suit premises, or their duly appointed attorneys, or a certified bailiff or a claimant of a reversionary interest in the premises. These are the requirements of the Distress for Rent (Bailiffs) Act, (Cap. 68) and according to the Rules under the same Act, such distress may only be effected by a

person who has either a general or special certificate to distress for rent. Neither Laximides Dalia nor anyone claiming to act on his behalf or with power of attorney had any authority to distress for rent or evict the appellants from the suit premises.

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

appointment and powers of Rennie Richardson as attorney. In effect, the Court of Appeal had failed to correctly reassess the evidence on this matter.

On the issue of the number and type of property taken from both the flat and shop, it was the contention of counsel for the appellants that the Court of Appeal should have rejected the trial court's findings and held the first appellant's own list of the property and its value as correct. He submitted that the court had therefore erred in holding that as there was no proof regarding the property which had been levied from the shop, the appellants were not entitled to the return of any of it. Counsel for the respondent submitted that the property which had been legally removed from the suit premises had been witnessed by the police officer who countersigned the list containing that property and the appellants could have gone and collected that property as suggested by the learned trial judge but they had chosen not do so. On ground 3 of appeal, counsel for the appellants submitted that since the evidence showed that Freddie Kasozi was not qualified to act as a bailiff and had not been properly appointed to act on behalf of the auctioneers, the Court of Appeal erred in both law and fact when it held that Freddie Kasozi had acted lawfully.

Mr. Nkurunziza for the respondents opposed the appeal. He argued ground 1 of the appeal first. He contended that the appellants had failed to show that the Court of Appeal had misconstrued the law. A refusal by a tenant to submit to the authority of a new landlord who has legally and legitimately succeeded another does not, in any way, alter their relationship of landlord and tenant. It was therefore counsel's contention that both the trial judge and the Court of Appeal had properly construed section 3 of the

Distress for Rent (Bailiffs) Act. On whether or not Freddie Kasozi, the second respondent, was qualified, Mr. Nkurunziza submitted that Kasozi worked for Charles Rwija, the owner of Security Auctioneers who were qualified to distress for rent, and acted as their agents. Mr. Nkurunziza submitted that the case of Souza Figueiredo & Co Ltd. V. George and Others (supra) cited by counsel for the appellants in support of his submissions was distinguishable from the facts of this case in that in the Souza case, no legal relationship existed between the parties at all.

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

On ground 3, counsel submitted that the appellants had not shown that Freddie Kasozi was not acting with authority. Respondents had shown that Kasozi was an employee of the Security Auctioneers owned by Rwija. The onus of disproving these facts rested upon the appellants and they had failed to discharge it. The High Court and the Court of Appeal relied upon those facts and relationships between the parties whose decision, as in the case of Kampala City v. Nakaye (1972) E.A. 446, depended on the credibility of witnesses. The courts' findings in this case were amply supported by other evidence. Counsel contended that in relation to the items of goods levied in the suit premises, the trial judge had opportunity to

observe the demeanour of witnesses and to believe or disbelieve any of them. In the result the learned trial judge chose to believe one set of figures rather than the other and the justices of appeal had no reason to disagree with him. Mr. Nkurunziza submitted that the property which had been legally removed from the suit premises had been witnessed by a police officer who countersigned the list containing that property and the appellants could have collected that property as suggested by the learned trial judge but they chose not to do so. In the result, counsel for the respondent asked this Court to dismiss grounds 2 and 3 of the appeal.

In this judgment, I propose to deal with and dispose of grounds 1,2, and first. Although the pleadings and the submissions do not bring them out precisely, it is my opinion that this appeal raises two distinct and different issues to be considered and resolved. These are whether or not the distress for rent and seizure of appallents' property for purposes of levying them for rent were lawful and, whether in any event, the owner of the suit premises or his authorised agents had power to evict tenants who had resisted his authority and notices to quit and whether such owner or the said agents had authority to detain appellants' property after eviction.

I will deal with the matter of distress for rent first. On the facts of this case, there is no doubt in my mind that a landlord/tenant relationship existed between Laximidas Dalia who had repossessed the suit premises from the Departed Asians Property Custodian Board and the appellants. Previous to the incidents leading to this case, the appellants had properly and regularly acknowledged the Board as their landlords. Repossession of the suit premises was lawfully effected and accepted by the Custodian Board

which informed the appellants in writing of the new change of ownership. There is evidence that the appellants challenged the right of Laximidas Dalia to the Repossession Certificate by way of a High Court suit and obtained a temporary injuction which was later vacated, that challenge did not alter their status as tenants. The extract cited by counsel for the respondent from Halsbury's Laws of England, Third edition, vol. 38, at p. 741, paragraph 1207 where in which the learned authors observe, that

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

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

and conduct. In the result, distress for rent in this case was effected against trespassers, and it could not have been possible for the persons who effected the alleged distress for rent to do so under the Act.

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

"3- *From and after the commencement of this Act, no person, other than a landlord in person, his attorney or the legal owner of the reversion, shall act as bailiff to levy any distress for rent unless he shall be authorised to act as bailiff by a certificate in writing under the hand of a certifying officer, and such certificate may be general or apply to a particular distress or distresses."*

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

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

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

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

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

In Eastern Radio Service And Another v. R.J. Patel t/a Tiny Tots And Another (1962), E.A. 818, the appellant was a tenant and the first

respondent was landlord of certain premises in respect of which the landlord advocates claimed some shs. 14,000/= for arrears of rent and expenses and in their letter of claim also indicated that the landlord might exercise his right of reentry for non-payment of the rent.

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

In the case of Kanji Naran Patel v Noor Essa And Another, (1965) E.A. 484, it was held that when a distress for rent is illegal it is the bailiff who is primarily liable and the landlord is only liable if he can be shown to have sanctioned or ratifies the bailiff's wrongful act. In light of what I have

said on the matter of distress for rent and, bearing in mind the authorities reviewed, it is my opinion that grounds 1 and 2 (a) , (b) and (c) must succeed.

I now come to the second issue which is implicit in grounds 2 (d) and (c) and ground 3 of appeal, namely the issue of whether the eviction of the appellants from the suit premises was lawful and whether in the process of that eviction, the respondents were entitled to remove and take away the appellants' property. I do not agree with the submissions of counsel for the appellants that their eviction had to comply with the provisions of the Distress for Rent (Bailiffs) Act. I have already held that despite the appellants' protests and refusal to acknowledge Laximidas Dalia as the new owner of the suit premises, in both law and fact he was the owner and they had become trespassers.

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

Thus, in a series of cases, including Jackson v. Courteneou (1857)

8 E & B. 8, Ex. Ch., Scott v. Matthew Brown & Co. Ltd. (1884) 51 LT. 746, Shaw v. Chairitle (1850) 3 Car. & Kir. 21 and Hemmings v. Stoke Pages Golf Club Limited And Another, (1920) 1K.B. 720 (C.A.), it has been the principle that if a trespasser peacefully enters or is on a land, the person who is in, or entitled to, possession may request him to leave, and if he refuses to leave that person may remove him from the land, using no more force than is reasonably necessary. In the case of Hemmings And Wife v. The Stoke Poges Golf Club Limited, And Another, (supra), Scrutton, L.J. said,

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

In Lows v. Telford (4) 1 App, Cas. 414, at 426, it was said:
"The statement of Maule J. in Jones v. Chapman, 2 Ex. 803 at 821 and Laws v. Telford (4) 1, App. Cas, 414, thetheme was expressed that, 'As soon as a person is entitled to possession, and enters in the association of that possession, or, which is exactly the same thing if any other person enters by command of that lawful owner, so entitled to possession, the law immediately vests the actual possession in the person who has entered."

Under the circumstances of this case, I am satisfied that the respondents had the power to evict the appellants from the suit premises in accordance with the provisions of the law. It is trite law that the owner of property has the right to evict a trespasser who has refused to vacate the property as was held in Harvey v. Brydges 14 M & W 437.

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

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

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

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

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

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

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

*"Since I have found that both the eviction and distress for rent were lawfully done, there is no need to consider the grounds that deal with remedies".* It is also worth noting that there were other grounds not considered by the same court, namely (d) and (e).

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

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

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

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

The ground framed in paragraph (d) of the Memorandum of Appeal before the Court of Appeal which was factual and evidential should have been resolved one way or the other in the interests of justice. On ground 4 of the appeal before this court, the Court of Appeal should have considered and resolved the issue of whether or not exhibit D1 was admissible. The court simply commented that the trial judge should have made a ruling on it

without the justices of the Court of Appeal themselves doing so. In my opinion, by failing to do so, the Court of Appeal misdirected itself. It is alos my view that, in any event, Exhibit D1 was admissible.

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

In the result, this Appeal partially succeeds. Taking into account all the facts and circumstances of this case, I would order that such property as was proved to have been removed and listed in accordance with the findings of the trial court should be returned to the appellants or its value paid to them by way of compensation. In addition, the sum of one hundred shillings ( 100) is awarded to the 1st appellant as general damages for the unlawful distress for rent. The eviction of the appellants from the suit premises was lawful and is hereby confirmed.
The appellants are awarded one half (½) of the costs of this appeal.

DATED AT MENGO THIS..15th.....DAY OF..Feb...2000.

G.W. KANYEIHAMBA

**JUSTICE OF THE SUPREME COURT**

*THE REPUBLIC OF UGANDA*

*IN THE SUPREME COURT OF UGANDA*
*AT MENGO*

*(CORAM: WAMBUZI - CJ, ODER - JSC, TSEKOOKO - N JSC, KAROKORA - JSC AND KANYEIHAMBA - JSC.)*

*CIVIL APPEAL NO. 7 OF 1999*
*BETWEEN*

*JOY TUMUSHABE & ANOTHER:* :: :: :: :: :: :: *APPELLANTS*

*AND*

*M/S. ANGOLO AFRICAN LTD. & ANOTHER:* :: :: :: :: :: :: *RESPONDENTS*

*[An Appeal from a decision and Orders of the Court of Appeal at Kampala. (Kato, Mpagi, Bahigeine & Berko - Justices of Appeal) dated 5-11-99, in Civil Appeal No. 38 of 1997]*

*JUDGMENT OF ODER - J.S.C.*

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

*Dated at Mengo this:* 15th ..... *Day of:* February *2000.*

A. H. O. ODER
*JUSTICE OF THE SUPREME COURT*

REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT MENGO


CORAM: WAMBUZI CJ ODER, TSEKOOKO, KAROKORA AND KANYEIHAMBA J.J.SC

CIVIL APPEAL NO. 7 OF 1999

BETWEEN

1. JOYCE TUMUSHABE )
2. NYABULIZA ENTERPRISES Ltd ) ..... APPELLANT

VERSUS

1. ANGLO AFRICA Ltd
2. FREDDIE M. KASOZI ..... RESPONDENT

*(Appeal from the decision and orders of the Court of Appeal at Kampala (Kato, Mpagi, Bahigeine, and Berko JJ.A) Dated 5TH November, 1998 in Court of Appeal Civil Appeal No. 38. of 1997)*

JUDGEMENT OF TSEKOOKO JSC

I have had the benefit of reading in draft the lead judgment of Kanyeihamba JSC, and that of Wambuzi , CJ . I agree with the conclusions reached in this matter and the orders proposed by Kanyeihamba JSC. I have nothing useful to add.

Delivered at Mengo this 15th day of Feb 2000.

J.W.N. Tsekooko
Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO.

CORAM: WAMBUZI, C.J., ODER, TSEKOOKO, KAROKORA, KANYEIHAMBA, JJSC

CIVIL APPEAL NO. 7/99

BETWEEN

JOY TUMUSHABE

NYABULIZA ENTERPRISES ..... APPELLANTS

VS

M/S ANGLO AFRICA LTD & ANOTHER ..... RESPONDENTS

*(Appeal from the judgment and Decree of the Court of Appeal of Uganda at Kampala before Justices Kato, Mpagi-Bahigeine, Berko JJA dated the 5th day of November, 1998 in Civil Appeal No. 38 of 1997)*

JUDGMENT OF KAROKORA, JSC.

I have had the advantage of reading in draft the judgment prepared by my learned brother, Kanyeihamba, JSC. I agree with his judgment and the orders he proposed. I had got nothing useful to add.

Dated at Mengo this ..... 15th ..... day of ..... February ....., 2000

.....

A.N. KAROKORA,
JUSTICE OF THE SUPREME COURT.