REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: KATUREEBE; CJ; TUMWESIGYE; ARACH-AMOKO; MWANGUSYA; MWONDHA JJ.S.C.)

CIVIL APPEAL NO: 07 OF 2015

BETWEEN

VIVO ENERGY UG. LTD
(FORMERLY SHELL U LTD) :::::::::::::::::::::::::::::: APPELLANT

AND

LYDIA KISITU :: RESPONDENT

[Appeal from the Court of Appeal at Kampala (Balungi Bossa, Kakuru and Ekirikubinza-Tibatemwa, JJ.A) dated 16th July 2015 in Civil Appeal No. 193 of 2013]

JUDGMENT OF TUMWESIGYE, JSC.

Lydia Kisitu, the respondent, by virtue of being manager of the estate of her father Christopher Mukasa, sued Vivo Energy Uganda Ltd, the respondent, and Bob Kasule, in the High Court vide HCCS No. 507 of 2005.

In the suit she sought, among other things, for a declaration that the defendants got registered as proprietors of land comprised in Kibuga Block 38 Plot 63 Kagugube, Kampala, through fraud. The land was owned by her father.

The High Court decided the suit in favour of the respondent and ordered for cancellation of Bob Kasule's and the respondent's name from the register, vacant possession, payment of mesne profits, general damages and costs. Being dissatisfied with the decision of the High Court, the appellant appealed against the decision to the Court of Appeal which upheld the decision of the High Court, hence this appeal.

Background.

Semu Kiwanuka, the respondent's grandfather was the registered proprietor of the suit land comprised in Mailo Register Volume 810 Folio 10 which later became Kibuga Block 38 Plot 63. He granted a 49 year lease to Gulam Hussein Alibhai who was registered as proprietor of the leasehold interest comprised in LRV 382 folio 14 on 12th April, 1956.

The appellant acquired the leasehold interest from Gulam in 1964. It went on to operate a fuel station on the said property under the management of Bob Kasule. When the respondent's grandfather died, her father Christopher Mukasa on 2nd January 1981 became the proprietor of the Mailo interest.

On 10th January 1988, Christopher Mukasa wrote to the appellant stating that since the appellant had refused his proposal to increase the rent from shs 150= to shs 150,000= he would not renew the lease upon its expiry.

In 2004 the respondent who had been residing in the United States returned to Uganda and found that since 1991 her father had become of unsound mind. She also found that on 26th June 1991 Bob Kasule had become the registered proprietor of the suit property. There was no evidence, however, to show that the respondent's father had transferred his title to Bob Kasule. She established that the transfer was effected using a Mutation Form Instrument No. 147565 dated 12th June 1991 lodged by Bob Kasule. No stamp duty was even paid.

In 1992 the appellant terminated the dealership of Bob Kasule because of the latter's failure to pay debts which he owed to the appellant on account of their dealing. On 18th April, 1995, Bob Kasule sold the mailo interest he had registered as proprietor of Kibuga Block 38 Plot 63 to the appellant. The appellant merged its leasehold interest with the mailo interest he bought from Bob Kasule.

Having obtained a court order to manage her father's estate on account of his being of unsound mind, the respondent instituted a suit against the appellant and Bob Kasule for the recovery of the property. The High Court decided the suit in her favour and ordered

for the cancellation of Bob Kasule's and the appellant's names from the register, and reinstatement of the respondent's father on the register, vacate possession of the property by the appellant, payment of mesne profits amounting to shs. 273,004,450=, general damages of shs. 80,000,000= and costs of the suit.

The appellant appealed to the Court of Appeal against the decision of the High Court. The Court of Appeal dismissed the appeal and upheld the decision of the High Court. Being dissatisfied, the appellant instituted this appeal.

Grounds of Appeal.

The appellant's appeal is based on the following grounds:

1. **That the learned Justices of Appeal erred in law in holding that the registration of the appellant as proprietor of land comprised in Block 38 plot 63 Bombo Road, Kampala was tainted with fraud.**
2. **That the learned Justices of Appeal erred in law when they held that mesne profits are not special damages thereby erroneously upholding an award of 273,000,000= as mesne profits to the respondent.**
3. **That the learned Justices of Appeal erred in upholding the award of general damages totaling to shs. 80,000,000/=**

The appellant asked court to set aside the orders of the courts below and to award it costs.

At the hearing of this appeal Mr. Joseph Luswata appeared for the appellant while Mr. Evans Tusiime appeared for the respondent. Both parties filed written submissions.

Submissions of counsel

Learned counsel for the appellant submitted that both the High Court and the Court of Appeal erroneously based their decision on the ground that the appellant knew that the property belonged to Mukasa because it was paying rent to him, and that at the time Bob Kasule purportedly transferred the suit property to it, it should have been put on notice of possible fraud as to how he had become the registered proprietor as there was no notice to them of change of proprietorship from Mukasa, and that there was circumstantial evidence that should have put the appellant on notice.

Counsel argued that fraud that vitiates a land title of a registered proprietor must be attributable to the transferee and that fraud of a transferor not known to the transferee cannot vitiate the title, and further, that fraud must be pleaded and proved, and the standard of proof is higher than on a balance of probabilities. He cited the case of **Kampala Bottlers vs. Damanico (U) Ltd**, SCCA 22 of 1992 in support of his argument.

He argued further that the courts below never paid attention to the principle that fraud must be strictly proved and that the respondent did not prove the particulars of fraud which were pleaded against the appellant, and that the concurrent findings of the court below

that there was enough circumstantial evidence to put the respondent on notice is a mere inference which falls below the standard required in a case of fraud. Therefore, this case is fit for this court to re-evaluate the evidence and draw its own conclusions, he argued.

Counsel contended further that the Court of Appeal was wrong to hold that the appellant was guilty of willful blindness which amounted to fraud. He argued against the Court of Appeal's reliance on the case of **Uganda Posts & Telecommunications vs. Abraham Kitumba**, SCCA 36 of 1995, which makes it imperative for a person who purchases land which he knows to be occupied by another person other than the vendor to make inquiries. He argued that the above case does not apply to the circumstances of the instant case because the appellant was in the physical occupation of the disputed land when the sale took place.

Counsel for the appellant argued further that Lydia Kisitu, the respondent, was not the owner of the mailo interest when it was acquired by the appellant in 1995, and that if the word "respondent" referred to Christopher Mukasa, the Court of Appeal erred to assume that owners of land give notice to their tenants whenever they transfer ownership.

In any case, counsel argued, how could Christopher Mukasa who the Court of Appeal found to have been diagnosed with dementia expect such a person to give notice to the appellant about the sale?

In reply to ground one, learned counsel for the respondent argued that the Court of Appeal properly re-evaluated the evidence on fraud and in particular the evidence of PW3 (the Registrar of Titles) and made a finding that the appellant had sufficient notice of fraud, and that willful blindness to the fraud may amount to fraud.

Counsel argued that effective transfer can only be made through a transfer form and not a mutation form and that the appellant ought to have conducted a formal search to ascertain all the information pertaining to the proprietorship of the suit land before purchasing it. He argued that the appellant should have inquired into how Bob Kasule could have become the owner of the mailo interest which originally belonged to their former landlord. He contended that the appellant was guilty of willful blindness since it knew Bob Kasule as an indebted man who had issued the appellant with cheques which were dishonoured for lack of funds on his bank account.

He argued that there was no contradiction on the part of the Court of Appeal as claimed by counsel for the appellant. The Court of Appeal clearly brought out all the circumstances which exposed the appellant's knowledge of the fraud. Counsel argued that the respondent's father always used formal communication to the appellant and that failure to receive such formal communication from the respondent's father should have put the appellant on notice that there was something suspicious about Bob Kasule's purchase of the suit property.

Counsel further argued that the respondent's father had already intimated to the appellant of his unwillingness to renew the lease after the appellant failed to agree to an increment in rent from shs. 150 to shs. 150,000 in 1988 and that the change of proprietorship of the suit land was an issue they were interested in and should have investigated. He relied on the case of **Fredrick J.K Zaabwe vs. Orient Bank** SCCA No. 04 of 2006 on what amounts to fraud.

He prayed this court to disallow this ground of appeal.

Consideration of Ground One.

The issue in ground one is whether the registration of the appellant as owner of the suit land was tainted with fraud which if proved, would vitiate its claim to be a bona fide purchaser for value without notice.

The general rule is that a certificate of title is conclusive evidence of ownership. (See Section 59 of the Registration of Titles Act). Section 176(c) of the same Act provides that the estate of a registered proprietor is protected against ejectment **except in the case of a person deprived of any land by fraud as against the person registered as proprietor of the land through fraud, or as against a person deriving otherwise than as a transferee bonafide for value from or through a person so registered through fraud**. (my emphasis).

Therefore, for the respondent to succeed she has to prove that Bob Kasule was registered as proprietor of the suit land through fraud and that the appellant was not a bona fide transferee for value.

Both the trial court and the Court of Appeal found that Bob Kasule became registered as proprietor of the suit land through fraud and that the appellant was not a bona fide transferee for value without notice. Concerning Bob Kasule's registration as proprietor of the suit land the Court of Appeal stated:

> **First, the fact that there is no evidence to show that the suit land was transferred to Bob Kasule through a proper instrument of transfer save a mutation form points to fraud attributable to the transferee. Secondly, the fact that Bob Kasule was registered as proprietor of the land in 1991 which period coincides with that when the respondent's father was diagnosed with dementia (a condition that affects memory) gives credence to the possibility that Bob Kasule could have manipulated and or exploited the situation to fraudulently have his name on the certificate of title without any opposition or challenge.**

The Court of Appeal, therefore, concluded that Bob Kasule was registered as a proprietor of the suit property through fraud.

The appellant's counsel conceded as much during the proceedings in the Court of Appeal. What he strenuously contested, however, was the finding that the appellant had notice of the fraud. In its

judgment the Court of Appeal was satisfied that the appellant was not a bona fide purchaser for value without notice. It stated:

> **It is no defence for the appellant to say that a certificate of title was enough in establishing the ownership of Bob Kasule when there was circumstantial evidence that should have put [the appellant] on notice requiring [it] to go beyond the certificate of title. In the Pyramid case (supra), it was stated that willful blindness may amount to fraud. Further, in the case of Uganda Posts & Telecommunications vs. Abraham Kitumba, SCCA No. 36 of 1995, court held that:**
>
> > **"A person who purchases an estate which he knows to be in occupation of another person other than the vendor must make inquiries.."**
>
> **The court relied on the case of Taylor vs. Stibbert [1803-13] All ER 432 and further held that, "the defendant failed to make reasonable inquiries of the persons in possession and such ignorance or negligence formed particulars of fraud."**
>
> **This court, in the case of Sir John Bageire vs. Ausi Matovu, CACA No. 07 of 1996 has also emphasized the value of land and the need for thorough investigations before purchase wherein the court, inter alia, held that:**

"Lands are not vegetables that are bought from unknown sellers. Lands are valuable properties and buyers are expected to make thorough investigations not only of the land but also of the sellers before purchase."

Counsel for the appellant complained that the Court of Appeal did not re-evaluate the evidence properly before agreeing with the High Court that the appellant was not a bonafide purchaser for value and that, therefore, following the case of **Kifamunte Henry vs. Uganda**, SCCA 10 of 1997, this court should re-evaluate the evidence and come to its own conclusion.

In the case of **Kampala Bottlers ltd vs. Damanico** (U) Ltd (supra) this court held, as counsel for the appellant correctly stated, that for the interest of the transferee to be defeated, even if fraud is proved against the transferor, it must be attributable directly or by implication to the transferee. Wambuzi C.J. stated in that case as follows:

"...fraud must be attributable to the transferee. I must add here that it must be attributable either directly or by necessary implication. By this I mean the transferee must be guilty of some fraudulent act or must have known of such act by somebody else and taken advantage of such act."

Chief Justice Wambuzi went on to state that fraud must be proved strictly, the burden of proof being heavier than on a balance of probabilities generally applied in civil cases.

Bob Kasule's fraudulent registration of the suit property in his name was not contested. As Wambuzi, C.J. stated in **Kampala Bottlers Ltd** (supra) knowledge of fraud can be attributed to the transferee directly or by implication. Direct evidence is not the only way to prove knowledge of fraud by the transferee. This knowledge can be inferred from circumstantial evidence.

There is evidence in this case that the appellant operated its fuel station on the suit land owned by the respondent's father on a leasehold basis and that the respondent's father had communicated to the appellant by letter which was produced as an exhibit, that on expiry of the lease he would not renew the lease as the appellant had refused to agree to the rent increase he proposed.

There is also evidence that from 1986 Bob Kasule was the appellant's dealer for the fuel station, and that Bob Kasule owed the appellant money on account of this dealership. The debt was shs. 58,000,000= which was quite substantial. Bob Kasule issued cheques in favour of the appellant for settlement of this debt which cheques were dishonoured. As a result, the appellant terminated Kasule's dealership on 27th October 1992.

There is evidence that in 1991 the suit property was transferred to Bob Kasule under instrument No. KLA 147565 which was a

mutation instrument for Block 38 Plot 63 (the suit land) and there was no instrument for transfer of the land from Christopher Mukasa lodged or registered. In 1995 Bob Kasule transferred the suit land to the appellant and the appellant's leasehold interest merged with the mailo interest. Bob Kasule's debt to the appellant was used as a set off against the purchase price for the land.

The Court of Appeal re-evaluated all this evidence to come to the conclusion that the appellant was not a bona fide purchaser for value without notice as there was circumstantial evidence to put the appellant on notice to go beyond the certificate of title. I entirely agree with the Court of Appeal that a bona fide purchaser for value should have inquired further to establish that the land it was purchasing was free of fraud.

First, the appellant was operating its business on the land it leased from the father of the respondent. The father of the respondent had been in written communication with the appellant about the inadequacy of rent and his intention to terminate the lease on account of the appellant's refusal to pay the rent which the respondent's father proposed. So he was not a stranger to the appellant and it would not have cost the appellant much to find out from its landlord whether he had sold the land and if so to who.

Secondly, Bob Kasule, the transferor, was well known to the appellant. He had been a dealer for its service station on the suit land from 1986 until the appellant terminated the dealership in

1992. Bob Kasule had accumulated debts over time and the appellant had even threatened him with criminal prosecution on account of the dishonoured cheques he issued to it. A bona fide purchaser should have been curious to find out from where the indebted Kasule had managed to obtain the money to purchase the very property on which the appellant was operating its business.

The Court of Appeal cited the case of **Uganda Posts and Telecommunications vs. Abraham Kitumba**,(supra) in which it was held:

> **A person who purchases an estate which he knows to be in occupation of another person other than the vendor must make inquiries...the defendant failed to make reasonable inquiries of the persons in possession and such ignorance or negligence formed particulars of fraud.**

Counsel for the appellant argued that this case should not be relied upon because there was no person in occupation of the land except the appellant. While this may be true, in my view, the relationship the appellant had with Christopher Mukasa made it more compelling for the appellant to make an inquiry as the appellant was in a landlord tenant relationship with Christopher Mukasa that had brought their relationship even closer.

In the case of **Fredrick J.K. Zaabwe vs. Orient Bank**, (supra) where a bank had executed a mortgage with a company which was found to have obtained Powers of Attorney through fraud, the court

found that the bank was also guilty of fraud because, in the words of Katureebe, JSC, (as he then was) "**the 1st respondent [the bank] had at the very least, constructive notice of fraud but chose to ignore it**". In the case of **Pyramid building Society (in liquidation) V. Scorpion Hotels**, (1997) VIC, CA, earlier referred to, it was stated that willful blindness may amount to fraud.

The appellant, in my view, was guilty of "willful blindness" or neglect to inquire about Bob Kasule's possible fraud in the transfer of the suit land. The motive for the appellant's failure to make inquiries beyond Bob Kasule's name on the certificate of title is not hard to find. The transfer had settled Kasule's debt which had been outstanding for a long time and which, if it had not been settled through the set-off would probably never have been settled at all. The appellant acquired a mailo land title in respect of which land he had last paid rent in 1981. The transfer of this land into its name would therefore remove the threat over payment of rent which it owed and which it stood to pay in future. The transfer also removed the threat of the appellant losing the land on which it operated its business after the expiry of the lease as was communicated to it by the respondent's father.

Therefore, the appellant had good enough reason to feign ignorance of whatever the transferor might have done to register the title of the suit land in his name, and to make inquiries which any person, acting as a bona fide purchaser for value, would have made.

It is my view that both the Court of Appeal and the High Court came to the right decision that the appellant's title was tainted with fraud and that the appellant was not a bona fide purchaser for value without notice. Therefore, ground one should fail.

Ground Two:

In ground Two, the appellant complains that the learned Justices of Appeal erred in law when they held that mesne profits are not special damages thereby erroneously upholding the award of shs. 273,000,000= as mesne profits to the respondent.

Counsel for the appellant faulted the Court of Appeal for upholding the award of shs. 273,000,000= as damages which were not pleaded and strictly proved as is required in awards of special damages. He relied on the case of **Siree vs. Lake Turkana Lodges Ltd** (2000) 2EA521 to argue that anything that can be calculated to a final cent is special damages. He cited section 2(m) of the Civil Procedure Act for the proposition that the words "actually received" or might with ordinary diligence "have received" means that mesne profits are capable of exact calculation and that, therefore, are special damages. He contended that the Court of Appeal erred when it held that the court has power to assess mesne profits down to the date when possession is actually given and yet special damages are not assessed but awarded as proved by the successful party. For this he relied on the case of **Haruna Serunjogi vs. George William Kijjambu** CACA 33 of 2002. He further argued that the court erred

when it relied on the valuation report (Exh.9) which put the rent of the neighboring stations at 6,000,000= which value influenced the 3,000,000 shs per month awarded to the respondent. He contended that this value presupposed that the entire service station was built on the disputed plot whereas not, and also that the neighboring stations were landlord built rather than tenant built which misinformed the decision of court. He further contended that the court did not put into consideration the developments made by the appellant on the suit land contrary to the law on award of mesne profits which excludes mesne profits arising out of improvements on the property by the defendant.

In response, counsel for the respondent submitted that mesne profits are not special damages and that the Justices of Appeal were right in holding that mesne profits are a special form of damages accruing from wrongful possession of land or trespass. For this view he relied on the case of **Elliot vs. Boynton** [1924] I Ch. 236. He sought to distinguish special damages from mesne profits which in his opinion relate to past pecuniary loss calculable at the date of trial and they encompass past expenses and loss of earnings. For this he relied on the case **Uganda Commercial Bank v. Kigozi** (2002) I EA 305. He further contended that the record shows that the appellant had not paid rent since 1981 as per the lease agreement and that the late Christopher Mukasa had communicated his unwillingness to renew the appellant's lease after its expiry in 2004 and that for the default on payment of rent for 23

years, the court had awarded shs. 4,450= to the respondent which amount was not challenged by the appellant.

Consideration of Ground Two:

Section 2(m) of the Civil Procedure Act defines mesne profits as –

> **"Those profits which the person in wrongful possession of the property actually received or might with ordinary diligence have received from it together with interest on those profits, but shall not include profits due to inputs made by the person in wrongful possession."**

The learned trial judge in his judgment held:

> **The plaintiff claimed that she be paid rent from 2004 to April 2012, i.e. 91 months at shs. 6 million per month according to the rate for a nearby petrol station making a total of shs. 546,000,000=. Rent is determined by both parties to the lease. It is a presumption that both parties could have agreed to a lesser or higher amount than the above figure. I would give the Defendant the benefit and fix the same at shs. 3,000,000/= (three million) making the grand total of mesne profits 273,004,450/= (two hundred seventy three million, for thousand, four hundred and fifty only)**

The Court of appeal stated in its judgment as follows:

We reject the appellant's submission that such mesne profits were special damages and as such had to be specifically pleaded. As we have found above, it is not [true] that mesne profits are special damages in the known legal definition of that term but are a special category of damages accruing from wrongful possession of land or trespass. All that the respondent needs to show is that the appellant made an unauthorized entry on the land. It is on record that the appellant's lease was due to expire in 2005 [meant 2004] and the lessor...was not willing to renew their lease of which the appellant was notified of the same. Therefore, their continued possession of the suit land from the period of expiry of the lease, i.e. from 2004 to 2012 amounted to trespass and wrongful possession.

We therefore, uphold the learned Judge's findings and holding in respect of the award of mesne profits.

India has exactly the same law word for word, as Uganda's concerning mesne profits (See section 2(12) of India's Code of Civil Procedure). I will quote extensively from the case of **Dr. J.K. Bhaktharasala Rao v. Industrial Engineers, Nellore**, AIR 2005 AP 438 which, I think, very well elaborates the law on mesne profits. The court stated in that case as follows:

While assessing the quantum of mesne profits, the factors such as location of the property, comparative value of the

property, condition of property in question, profits that are actually gained from the reasonable use of such property are generally taken into consideration by the courts. Moreover it is settled principle of law that the criteria for the calculation of mesne profits is not what the owner loses but profits should be calculated on the basis of what the person in wrongful possession namely, the defendants had actually received or might with ordinary diligence have received therefrom.

Moreover, the law of equity requires that mesne profits should be the net profits i.e. the profits derived after making deduction toward necessary expenditure for earning such profits. Therefore, all such payment made by the person in wrongful possession, as the plaintiff would have been bound to make if he had been in possession, should be deducted from the gross earnings. These expenses include, expenses incurred for maintenance of property, less paid on the property, e.t.c. depending on the nature of the property...

Likewise, the court should also deduct the profits made by the unlawful possessor through improvement in the property. It would be unjust on the part of court to award mesne profits without deducting these expenses.

In another case, **Umayun Dhaurajgir vs. Ezra Aboody 2008 (6) Bom. CR 862,** the court stated:

> **"It is settled law that while ascertaining mesne profits the test to be applied is not what the landlord has lost or would have earned by letting out or using the property himself but the test is what the wrongful occupant had actually received or might with ordinary diligence have received therefrom**.

See also Black's Law Dictionary, 9th Edition, P. 139, where the term mesne profits is defined as: "The profits of an estate received by a tenant in wrongful possession between two dates."

Clearly, according to section 2(m) of the Civil Procedure Act and as can be discerned from the excerpts of the Indian judgments cited above, mesne profits are profits which the person in wrongful occupation of the property "actually received" or might have received with ordinary diligence.

How then is the court to know what profits the person in wrongful occupation actually received? In my view, it is the duty of the plaintiff (the respondent in this case) to adduce before court evidence showing what the defendant (appellant in this case) earned as profits during the period the defendant was in unlawful occupation of the property. The plaintiff can apply for an order of discovery if necessary to enable him or her to obtain the necessary information. Since the respondent did not place before court

evidence showing the profits the appellant earned, there was no basis on which the court would grant mesne profits as the court could not speculate on it.

However, the respondent (plaintiff) in her plaint (see paragraph (e) of her prayer in the amended plaint) prayed court for an order directing the appellant (defendant) to pay her outstanding rent for the suit land from 1981 till the date of judgment. While giving evidence before the trial court she also prayed that the appellant pays her outstanding rent of shs.6,000,000/= per month from December 1981 till the date of judgment.

She produced before the trial a valuation report of the suit land (Exh. P.9) from M/S MPG Associates showing the monthly rent to be shs. 6,000,000/=. She also tendered evidence showing the rent which other service stations were paying by way of comparison. The respondent conceded that the claim for shs. 6,000,000/= per month as rent would begin from October 2004 when the appellant started its unlawful possession of the suit land as the period before that time was governed by the lease agreement which Christopher Mukasa and the appellant had executed.

The trial judge considered all the evidence presented and reduced the monthly rent claimed by the respondent from shs. 6,000,000/= to shs. 3,000,000/=. This amounted to a total of shs. 273,000,000/=. This amount was upheld by the Court of Appeal.

It is not clear why the trial judge called this amount of shs. 273,000,000/= mesne profits when the respondent (plaintiff) had made a separate claim for outstanding rent under paragraph (e) of her prayer based on paragraph 17 of the amended plaint. The claim for mesne profits was paragraph (f) of her prayer in the plaint. The trial judge, in my view, erred to mix the respondent's claim for rent with a claim for mesne profits and the Court of Appeal equally erred to regard the award of shs. 273,000,000/= as mesne profits. Still, in spite of the mix up, there is no doubt that what the two courts awarded in the amount of shs. 273,000,000/= was rent from October 2004 when the appellant's possession of the land became unlawful. It would be preposterous for the appellant to argue that it should be exempted from paying rent for all those years it was in unlawful possession of the suit land.

Considering the fact that the suit land is located in a prime area in Kampala, the monthly rent of shs. 3,000,000/= awarded by the trial court was not excessive regardless of developments the appellant may have made on the suit land and of the fact that the suit land only forms part of the land on which the appellant's service station is constructed.

I would, therefore, uphold payment by the appellant to the respondent of monthly rent of shs. 3,000,000/= from October, 2004 till the date of this judgment with interest at 8% p.a.. I would also uphold payment of shs. 4,450,000/= as rent to the respondent for

the period between 1981 to September 2004 as the latter payment was governed by the lease agreement.

Ground Three

Counsel for the appellant complained that the general damages of Ug. Shs. 80,000,000/= were wrongly awarded to the respondent as the respondent was not the owner of the suit land and, therefore, could not have been inconvenienced, stressed or suffered anguish, and that Christopher K. Mukasa was too sick to appreciate any wrongs made against him.

Counsel for the respondent opposed this ground. He submitted that the respondent as administrator and beneficiary to the estate of the late Christopher Mukasa was entitled to damages for all the inconveniences she underwent in a bid to recover the suit property.

He relied on **Robert Coussens vs. Attorney General**, SCCA No. 08 of 1999 to support his argument that the object of damages, is to compensate the affected party for the loss or injury he or she has suffered. He further argued that the quantification of general damages is an issue of discretion and that an appellate court can only interfere with the exercise of discretion if the trial court acted on a wrong principle.

The Court of Appeal in addressing this issue stated in its judgment:

> **"It is trite law that quantification of general damages is an issue of discretion and an appellate court can only**

interfere with the exercise of discretion of the trial judge only where he has acted on a wrong principle or where the award is manifestly low or high as to occasion a miscarriage of justice."

This is the correct statement of the law relating to quantification of general damages. An appellate court can only interfere with a trial courts discretion if the trial court acts on a wrong principle or where the award is manifestly low or high and which does not apply in this case.

I would therefore dismiss this ground. The trial court's award of damages of shs. 80,000,000/= is upheld with interest at court rate from the date of the High Court judgment till payment in full.

All other remedies ordered by the High Court and which are not specifically mentioned here are also upheld.

In the result, I find that the appellant's ground one and three fail while ground two partly succeeds. I would accordingly award 80% of the costs of this appeal to the respondent.

Dated this.....30th.....day of March.....2017

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Jotham Tumwesigye

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: Katureebe, CJ; Tumwesigye; Arach-Amoko; Mwangusya; Mwondha, JJ.S.C.)

CIVIL APPEAL NO.07 OF 2015

BETWEEN

Vivo Energy (U) LTD
(Formerly Shell U LTD) :::::::::::::::::::::::::::::::: **Appellant**

AND

Lydia Kisitu :::::::::::::::::::::::::::::::: **Respondent**

[Appeal from the court of Appeal at Kampala (Balungi Bossa, Kakuru and Ekirikubinza- Tibatemwa, JJA) dated 16th July,2015 in Civil Appeal No.193 of 2013]

JUDGMENT OF KATUREEBE,CJ

I had the benefit of reading in draft the judgment of my learned brother, Tumwesigye, JSC and I fully concur with the decision and the orders he has proposed.

As the other members of the court agree, this appeal is hereby dismissed with costs as herein after stated.

It is hereby ordered as follows:

1- The appellant's names and the Respondent's names shall be cancelled from the Register and the Respondent's father's names shall be reinstated thereon.
2- The appellant shall vacate possession of the property forthwith.
3- It is further ordered as follows:

The appellant shall pay to the respondent.

(a) monthly rent of shs 3,000,000/= from October, 2004 till the date of this judgment with interest thereon at the rate of 8% per year.

(b) monthly rent of shs 4,450,000/= for the period between 1981 to September 2004.

(c) shs 80,000,000/= (Eighty million shillings only) general damages

(d) 80% of the costs.

Dated at Kampala this .....30th.....day of .....March.....2017

Bart M. Katureebe
CHIEF JUSTICE

REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: KATUREEBE CJ, TUMWESIGYE, ARACH-AMOKO, MWANGUSYA, MWONDHA, JJSC;)

CIVIL APPEAL NO: 07 OF 2015

BETWEEN

VIVO ENERGY UG.LTD
(FORMERLY SHELL U LTD)::::::::::::::::::::: APPELLANT

AND

LYDIA KISITU::RESPONDENT

[Appeal from the judgment of the Court of Appeal at Kampala(Balungi Bossa, Kakuru and Ekirikubinza-Tibatemwa, JJA) dated 16th July, 2015 in Civil Appeal No.193 of 2013]

JUDGMENT OF ARACH-AMOKO, JSC

I have had the advantage of reading in advance the judgment prepared by my learned brother, Hon. Justice Tumwesigye, JSC. I agree with him and the orders he has proposed.

Dated at Kampala this...30th.....day of...March..... 2017

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ARACH-AMOKO, JSC

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Katureebe, CJ; Tumwesigye; Arach-Amoko; Mwangusya; Mwondha; JJ.S.C)

CIVIL APPEAL NO. 07 OF 2015

BETWEEN

VIVO ENERGY (U) LTD (FORMERLY SHELL U LTD)..... APPELLANT

AND

LYDIA KISITU ..... RESPONDENT

[Appeal from the court of Appeal at Kampala (Balungi Bossa, Kakuru and Ekirikubinza-Tibatemwa, JJA) dated 16th July 2015 in Civil Appeal No. 193 of 2013]

JUDGMENT OF MWONDHA, JSC

I have had the benefit of reading in draft the judgment of Hon. Justice Tumwesigye JSC. I agree with the reasoning, decision and orders proposed.

Dated at Kampala this 30th day of March 2017

Faith Mwondha
JUSTICE OF THE SUPREME COURT

REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Katureebe, CJ; Tumwesigye; Arach-Amoko; Mwangusya; Mwondha; JJ.S.C)

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JUDGMENT OF MWANGUSYA, JSC

I have had the benefit of reading in draft the judgment of Hon. Justice Tumwesigye, JSC. I agree with his reasoning and conclusion that the appeal be dismissed. I also agree with all the orders he has proposed.

Dated at Kampala this 30th day March 2017

Hon. Justice Mwangusya Eldad
JUSTICE SUPREME COURT