THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CONSOLIDATED CIVIL SUITS NOS. 021 AND 022 OF 2012

1. BYAMUGISHA FERDINAND
2. WILLIMAN MABIRIZI ::::::::::::::::::::: **PLAINTIFFS**
3. NSHEMEREIRWE MARGARET

VERSUS

1. ATTORNEY GENERAL
2. UGANDA LAND COMMISSION ::::::::::::::::: **DEFENDANTS**

BEFORE: HON. JUSTICE VINCENT EMMY MUGABO

JUDGMENT

Introduction

The 1st plaintiff filed Civil Suit No. 021 of 2012 while the 2nd and 3rd plaintiffs filed Civil Suit No. 022 of 2012, both suits against the defendants. Both suits were consolidated since they had the same issues to save the time and resources of both the court and the parties involved. The plaintiffs' claim against the defendants jointly and severally is for trespass, a declaration that they are the owners of the suit land, a permanent injunction against the defendants restraining their agents from interfering with the plaintiffs' land, an order that the refugees settled on the suit land be evacuated, exemplary damages, general damages and costs of the suit.

Brief Facts

The 1st plaintiff claims ownership of the land comprised in FRV 1073 Folio 11 Kibale Block 37 Plot 7 and FRV 1280 Folio 17 Block 37 Plot 9 land at Kyempango while the 2nd plaintiff claims ownership of land comprised n FRV 1187 Folio 7 Block 36 Plot 14 at Kyempango in Kibale County Kamwenge district (which land is herein collectively referred to as "suit land"). The plaintiffs further claim that sometime in 2012, the government of Uganda, through the Office of the Prime Minister, settled refugees on the suit land without any claim of right or the plaintiff's consent. Despite their complaints, the 1st defendant failed to take any action to evacuate the refugees from the suit land, an act that continues to cause grave losses, inconvenience, and mental anguish to plaintiffs.

In their respective written statements of defence, the defendants denied the allegations by the plaintiffs and stated that the 2nd defendant is the registered proprietor of the suit land and that the suit land is part of the land comprised in FRV 601 Folio 9 Plot 3 Block 53, Plot 5 Block 37, Plot 15 Block 24, and Plot 18 Block 28 Land at Rwamanja Kibale measuring approximately 7,819.7 hectares which was gazetted as a refugee settlement land in the 1960s and that they have at all material times been in actual and effective possession of the same. The defendants also claim that the plaintiffs obtained their respective certificates of title fraudulently and the same should be cancelled.

Representation and hearing

At the hearing, the 1st plaintiff was represented by Mr. James Bwatota while the 2nd and 3rd plaintiffs were represented by Mr. Twesigye Enock. The defendants were represented by Ms. Racheal Atumanyise. To prove their case, the plaintiffs presented 3 witnesses while the defendants

presented 4 witnesses. Both counsel filed written submissions which I have considered in this judgement.

Issues for Determination

In their joint scheduling memorandum, counsel for the parties agreed on the following issues, which have been slightly modified under Order 15 Rule 5 of the Civil Procedure Rules, for this court's determination:

1. Whether the plaintiffs are lawfully registered proprietors of the suit land
2. Whether the suit land is part and parcel of the 2nd defendant's land registered for refugee settlement land title in the name of the 2nd defendant.
3. Whether the defendants committed acts of trespass of the suit land
4. What are the remedies available to the parties?

Burden and Standard of Proof

In civil matters, the burden of proof rests on the plaintiff who must adduce evidence to prove his or her case on the balance of probabilities to obtain the relief sought (***See: sections 101-103 of the Evidence Act Cap 43).*** Court must be satisfied that the plaintiff has furnished evidence whose level of probity is such that a reasonable man might hold that the more probable conclusion is that for which the plaintiff contends (**See:** ***Lancaster Vs Blackwell Colliery Co. Ltd 1982 WC Rep 345*** and ***Sebuliba Vs Cooperative Bank Ltd (1982) HCB130***).

Consideration by Court

Issue 1: Whether the plaintiffs are lawfully registered proprietors of the suit land

The general rule under section 59 of the Registration of Titles Act is that a certificate of title is indefeasible and can't be impeached by reason or on account of any informality or irregularity in the application or the proceedings previous to the registration of the certificate. However, there are exceptions to this general rule especially when such a certificate is procured by fraud or illegality ***(see: Sections 77 and 176(c) of the Registration of Titles Act Cap. 230* and the case of *TransRoad Uganda Ltd Vs. Commissioner Land Registration Civil Suit No 621 of 2017).***

The plaintiffs led evidence to show that they are registered proprietors of the suit land. Certificates of title of the 1st plaintiff for Plots 7 and 9 were admitted in evidence as Pexh 1 and Pexh 2, respectively. While the certificate of title for the 2nd and 3rd plaintiffs was admitted in evidence as Pexh 7.

The 1st plaintiff testified that he purchased Plot 7 from Majora Yurani and Plot 9 from Busingye Edward who were indigenous customary owners of the respective Plots in the year 2010. For his part, the 2nd plaintiff told the court that he purchased Plot 14 as customary land in 1991 from Stephen Kaija. A sale agreement of the 2nd plaintiff was admitted in evidence as Pexh 10

The 1st plaintiff also tendered in evidence photos to prove that he was in posession of the suit land before the government settled the refugees on the same land in the year 2012. That he had a cattle farm on Plot 7 and a maize plantation on Plot 9. The photos were admitted in evidence as Pexh 3 and Pexh 4. The 2nd plaintiff also told the court that at the time the refugees were settled on the suit land, he had coffee and banana plantations and 35 heads of cattle on the suit land. The plaintiffs also

notified the commissioner in charge of refugee settlements of the encroachment of the suit land by the 1st defendant and issued a statutory notice of intention to sue which were noted heeded by the defendants.

Both PW1 and PW2 told the court that before the application for registration of the suit land, they engaged a registered surveyor, PW3, who carried out a survey and established that the suit land did not encroach on the land that is registered in the names of the 2nd defendant. This testimony was corroborated by PW3.

The defendants, on the other hand, allege that the plaintiffs committed acts of fraud during the conversion of the suit land from customary to freehold tenure. Counsel referred this court to the case of ***Fredrick Zaabwe Vs Orient Bank & Others SCCA No. 04 of 2006*** for the definition of fraud. Counsel argued that the plaintiffs' certificates of title were obtained through fraud by secretly applying for registration of the suit land before the Kamwenge District Land Board well knowing that the suit land belonged to the 2nd defendant, forging inspection reports and secretly obtaining registration of the same.

The question that this court must answer is whether the certificates of title of the plaintiffs are impeachable due to fraud.

Quoting ***Black's Law Dictionary 6th Edition, Page 660***, the Supreme Court in the case of ***Frederick J.K. Zaabwe (supra***) gave an elaborate definition of fraud. That case underscores the fact that fraud is intricate and encompasses various forms. So, to speak, fraud entails intentional distortion of truth to induce reliance, leading to harm or loss. It includes misrepresentation through words, actions, misleading statements, or concealed information. Fraud encompasses any deceptive means

employed to gain an unfair advantage over another. It differs from negligence as it is always intentional.

In the case of ***David Sajjaaka Nalima v Rebecca Musoke SCCA No. 12 of 1985*** Wambuzi, CJ (as he then was) quoting ***Wainiha Saw Milling Co. Ltd Vs. Wainone Timber Co. Ltd. (1926) A.C 101*** held thus:

> ***"Fraud in these actions i.e. actions seeking to affect a registered title means actual fraud, dishonesty of some sort not what is called constructive fraud – an unfortunate expression and one very apt to mislead, but often used for want of a better term to denote transactions having consequences in equity similar those which flow from fraud."***

In the instant case, the plaintiffs testified that they bought their respective portions of the suit land from customary holders. The plaintiffs also applied for conversion of the respective portions of the suit land from customary tenure to freehold tenure through the Kamwenge District Land Board. This evidence can be ascertained from Dexh 2, Dexh 3, and Dexh 4. Dexh 2 shows that the 2nd and 3rd plaintiffs applied for conversion of Plot 14 block 36 from customary to freehold tenure, a notice for hearing the application was issued, and the Area Land Committee conducted the inspection and recommended the registration of the suit land. Kamwenge District Land Board then made a freehold offer to the 2nd and 3rd plaintiffs and subsequently, a certificate of title vide FRV 1187 Folio 7 Plot 14 Block 37 land at Kyempango was issued. The 1st plaintiff also followed the same process as per Dexh 3 and Dexh

4 to obtain the certificates of title with respect to his parcels of the suit land.

As testified by PW3, there is evidence that at the time of registration, the suit land had never been surveyed. According to PW3, Joyce Nkunze Habaasa, a registered land surveyor, plaintiffs contacted her to survey the suit land in the year 2012. That she surveyed the suit land and submitted her paperwork for plotting to Entebbe and Fort Portal Zonal Offices. At the Entebbe office, a reduction was done on a scale of 1: 50,000 and all three 3 particular surveys were found to fall outside the boundaries of the Rwamanja Refugee settlement camp.

Although DW1, Higiro Ngabonziza Vincent told the court that the suit land was occupied by Rwandan refugees during the 1979 war who later returned to Rwanda in 1994, during cross-examination he stated that he settled at Rwamanja Camp 1 which is about 6 or 7 miles from the suit land and had never stayed on the suit land. DW1 also told the court that the Tooro Kingdom Land Board started distributing refugee settlement land which measured 54 square miles and in 1981 part of the refugee settlement land was given to nationals which reduced the refugee settlement land to 42 square miles.

In ***Kampala Bottlers Ltd Vs. Damanico (U) Ltd SCCA No. 22/92,*** Wambuzi C J (as he then was) held that ***"fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters."***

However, in all cases, fraud is a conclusion of the law. This was emphasized by Oder, JSC (as he then was) in the case of ***J.W.R. Kazzora Vs M.L.S. Rukuba SCCA No 13 of 1992*** quoting the case of

B.E.A. Timber Co. v. Inder Singh Gill (1959) E.A. 463 at 469 when he held thus:

> ***"Fraud, however, is a conclusion of law. If the facts alleged in the pleading are such as to create fraud, it is not necessary to allege the fraudulent intent. The acts alleged to be fraudulent must be set out, and then it should be stated that these acts were done fraudulently, but the acts fraudulent intent may be inferred."***

From the testimonies of the plaintiffs' witnesses and that of DW1 and DW2, and the evidence on record, the defendants have not discharged their burden to prove that the certificates of title in the names of the plaintiffs were procured by fraud. There is evidence that the suit land had never been surveyed before (as I will also demonstrate while resolving issue 2), and the plaintiffs followed the known process of conversion of the suit land from customary to freehold tenure.

Contrary to the argument of counsel for the defendants, the fact that the 1st plaintiff was a senior Lands Officer Of Kamwenge District and Acting Secretary of the Kamwenge District Land Board at the time the conversion and registration of the suit land was done is not in its self an instance of fraud.

It is therefore my finding that the defendants have not shown that the plaintiffs deviated from the legally established due process required for securing registration on the suit land in the presence of Dexh 2, Dexh 3 and Deh 4. Equally, there is no evidence adduced by the defendants to show that at the time of the application, the plaintiffs knew that the suit land belonged to the government or that they concealed any information to gain the advantage of the defendants in the process of

conversion of the suit land. As such, on the balance of probabilities, the defendants have not discharged their evidential burden to prove fraud on the part of the plaintiffs.

Therefore, it is the finding of this court that the plaintiffs are lawfully registered proprietors of the respective parcels of the suit land.

Issue 2: Whether the suit land is part and parcel of the 2nd defendant's land registered for refugee settlement land title in the name of the 2nd defendant.

The defendants allege that the suit land belongs to the 2nd defendant and has been at times in occupation and possession by the 1st defendant. The defendants through PW4, the commissioner in charge of refugee settlement in the Office of the Prime Minister, tendered in a copy of the 1964 gazette notice which was admitted in evidence as Dexh 5, a topographic map showing the boundaries of the refugee settlement land which was admitted as Dexh 6 and the certificate of title for the 2nd defendant in respect to FRV 601 Folio 9 Plot 3 Block 53, Plot 5 Block 36 Plot 15 Block 24, Plot 18 Block 28 land at Rwamanja measuring 7,818.7 hectares.

The defendants also relied on the "boundary opening report" dated 26th February 2015, admitted in evidence as Dexh 1, which made the following findings: (a) the survey under the refugee camp was found to be in error with linear miss-closures of 800 metres, (b) the surveys in respect to the suit land are to the west of the Kaitusu wetland bordering Katonga game reserve, (c) the Rwamanja Refugee Boundary opened as per the demarcation report of 1998 is 40.89 square miles, and (d) the surveys in respect to the suit land fall within the refugee camp.

I find the Dexh 1 as problematic as it falls short of strengthening the defendants' case for the following reasons. Firstly, while the report states that the suit land falls within the Refugee Camp land measuring 40.87 square miles as per the demarcation report of 1988, in its written statement of defence, the 2nd defendant stated that ***"it is the registered proprietor of the suit land and that the suit land is just a small portion of the land comprised in FRV 601 Folio 9 Plot 3 Block 53, Plot 5 Block 36, Plot 15 Block 24, and Plot 18 Block 28, land at Rwamanja kibale registered in the names of the second defendant measuring approximately 7,818.7 hectares."*** Never mind that 40.87 square miles would translate into 10,585.3 hectares which is way above the 7,818.7 hectares of the registered land in the names of the 2nd defendant as per Dexh 7, a certificate of title in the names of the 2nd defendant.

Secondly, the methodology used by DW3 did not conform to the instructions for opening the boundaries. The instructions to open the boundaries as per this court order issued on 8th July 2014 were restricted to the land comprised in FRV 601 Folio 9 Plot 3 Block 53, Plot 5 Block 36 Plot 15 Block 24 and Plot 18 Block 28 which measures 7,818.7 hectares not the "entire refuge settlement area" which allegedly measures 40.87 square miles. The purpose of the boundary opening was to ascertain whether the certificates of title for the plaintiffs overlap or encroach on the land which is registered in the name of the 2nd defendant or whether the suit land falls within that of the 2nd defendant as per its certificate of title.

DW2, a principal surveyor from the Ministry of Lands, Housing and Urban development (MLHUD), told the court that during the "boundary

opening", he made several observations which are worth noting: one, Plots 3,5 15 and 18 registered in the names of the 2nd defendant were in error and could not tally with the mark stones. That the mark stones went along the natural features mainly swamps, roads and some streams. Second, Plots 14 and 7 of the 1st plaintiff fell to the west of Kaitusu wetland which borders Katonga Game Reserve.

As opined by PW3, I am convinced that DW2 did not open the boundaries as per the court order. He instead relied on the 1960 Gazette notice and the 1988 land demarcation report to reach the impugned findings. Unfortunately, the 1960 gazette does not tell the size of the refugee settlement land and the 1998 land demarcation report was not availed to this court to establish its authenticity or whether it tells the size of the refugee settlement land. Additionally, as per Dexh 8, a letter dated 20th June 1998 from the commandant of the Rwamanja Refugee Settlement to the Director of Refugees, the 1988 survey only surveyed the southern part with an assumption that the other sides had their natural boundaries. i. e in the west the boundary was Kahunge Rwamanja Road, in the East, the game reserve and in the North Rwobihoiho River. The letter also states that ***"some problems are bound to erupt up at any time as there are some nationals who have started getting bibanjas in this surveyed land."*** This part was never surveyed by the 2nd defendant and the 2nd defendant's land, as described on the certificate of title, does not stretch up to the game reserve.

The foregoing points to the fact that the 1988 land demarcation report cannot be the basis for ascertaining the actual size of the refugee settlement land yet the same had been surveyed in 2005 and titles

issued in 2006. Indeed as per Dexh 1, the suit land falls within the west of Kaitusi wetland bordering Katonga Game Reserve which had never been surveyed before 2012 when the plantiffs started the process of conversion of the suit land.

As per the testimony of DW1 and according to Dexh 8, the Bibanja claims in the area started as far as the early 1980s, especially with the intervention of the Toro Kingdom Land Board which, according to DW1, started distributing land to the nationals. Also according to DW4, the Refugee Settlement Officer, there were Bibanjas claims in 1982 which led to the intervention of Hon. Rwanyarare, a minister at the time.

One would wonder why, when it came to registering refugee settlement land in the year 2005, the defendant only registered and titled 7,818.7 hectares when, at all material times, they claim to have been the owners and in actual possession of the entire Refugee settlement land measuring 40. 87 square miles (approximately 10,585.3 hectares) and belonged to it? Why would defendants leave out 2,766 hectares during the registration of the Rwamanja refugee settlement land?

I would also agree with the counsel for the plaintiff's argument that the 1st plaintiff's land does not encroach that of the 2nd defendant since none of the 2nd defendant's Plots falls within Block 37 and that the 2nd defendant's land is at Rwamanja while the 1st plaintiff's land is at Kyempango which locations are 12 kilometres apart. The same argument can be posited for the 2nd and 3rd plaintiffs' land.

In view of the foregoing, it is my conclusion that the suit land is not part and parcel of the 2nd defendant's land registered for settlement title in the names of the defendant.

Issue 3: Whether the defendants committed acts of trespass on the suit land.

Counsel for the plaintiffs submitted that the plaintiffs had led evidence to the effect that they are the owners of the suit land and were in possession of the same in 2012 when the government settled the refugees on the same land. Counsel for the plaintiffs argued that the actions of the government of settling refugees on the suit land without any claim of right, interest, the plaintiffs' permission or adequate compensation amounted to trespass.

Counsel referred this court to the case of ***Justine E.M.N Lutaaya Vs. Stirling Civil Engineering Ltd Civil Appeal No. 011 of 2002*** for the definition of trespass. Counsel also referred this court to the case of ***Rwamanja Land Displaced Claimants Associated Ltd Vs. the Attorney General and 2 others consolidated Msc. Cause No. 04 of 2014*** where the court found that the actions of the government of evicting the Bibanja holders on the same refugee settlement area infringed the claimant's constitutionally guaranteed rights under Articles 24, 26 27 and 40 of the constitution.

On the other hand, counsel for the defendants argued that the suit land was gazetted as a refugee settlement area and that under section 14 of the Control of Alien Refugee Ordinance No. 19 of 1960, it is an offence for a person, other than a refugee or any authorized person, to enter or be within a refugee settlement without general or special permission of the director or the settlement commandant. Counsel also cited the case of ***Kaggwa Vs. Apire Civil Suit No. 126 of 2020*** to argue that the defendants have at all material times enjoyed factual possession of the suit land.

Counsel for the defendants also argued that to prove allegations of trespass, the plaintiffs had the obligation to prove that the disputed land belonged to them, that the defendants had entered upon it, and that the entry was unlawful in that it was made without permission or that the defendants had no claim or right or interest in the disputed land. Counsel referred this court to the case of ***Sheikh Muhammed Lubowa Vs. Kitara Enterprise Ltd CACA No. 04 of 1987.***

I have already made a finding that the plaintiffs are the lawfully registered proprietors of the suit land. The plaintiffs also led evidence to the effect that in the year 2012, they were in actual possession of the suit land. The 1st plaintiff led evidence to show that he had a cattle farm on Plot 7 and maize on Plot 9 as per Pexh 3 and Pexh 4. The 2nd plaintiff also testified that he had coffee and banana plantations as well as cattle on his portion of the suit land.

During locus, the 1st plaintiff told the court that the boundary mark stones were removed but he was able to identify some of the features that formed the boundaries of the suit land such as Misisi trees for Plot 9 and some Miyenjye for Plot 7. The 2nd plaintiff also told the court that the features such as the stones and the Mitooma trees were removed or cut.

There is cogent evidence that the government settled refugees from the Democratic Republic of Congo on the suit land in the year 2012. The 1st defendant does not deny this fact but argues that it settled the refugees on the 2nd defendant's land which is a refugee settlement area. During locus, the court observed that the suit land is still occupied by the refugees who also cultivated it.

Having found that the plaintiffs are the lawfully registered proprietors of the suit land and that they were in actual possession of the same in 2012, I find that the actions of the government to settle refugees on the same land without their permission or claim or interest in the suit land to be unlawful.

The government should have first sought permission from the plaintiffs, or better still, paid adequate compensation to the plaintiffs before settling the refugees on the suit land.

My conclusion is that the acts of the 1st defendant to settle the refugees on the suit land interfered with the ownership and possession rights of the plaintiffs and are acts of trespass.

Issue 4: What are the remedies available to the parties?

In their respective plaints, the plaintiffs prayed for several prayers including a declaration that they are the owners of the respective parcels of the suit land. A permanent injunction restraining the defendants, their employees or agents from interfering with the suit land, an order for evacuating the refugees in the suit land, exemplary damages, general damages, interest on damages and costs of the suits.

Counsel for the 1st plaintiff argued that the 1st plaintiff had led evidence to the effect that he had crops and cattle on the suit land and was evicted from his land which measured 22.145 hectares. Counsel suggested that the 1st plaintiff should be paid UGX. 500 million as compensation for the suit land. Counsel for the 2nd and 3rd defendants also proposed UGX. 500 million as compensation for their land.

On the prayer of exemplary damages, counsel for the 2nd and 3rd plaintiffs argued that such damages are awarded where the plaintiff has suffered an unconstitutional act, and in the instant case the actions of evicting the plaintiffs by the government were oppressive and arbitrary. Counsel proposed a sum of UGX. 1 billion, as a sufficient award, for exemplary damages.

On the prayer of general damages, counsel for the 2nd and 3rd defendants argued that general damages are presumed to be direct, natural or probable consequences of an act complained of and are awarded at the discretion of the court. Referring to the case of ***Mohan Kakuba Radle Vs. Warid Telecom Uganda Ltd HCCS No. 224 of 2021***, counsel also argued that in determining the value of general damages, courts are guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and the extent of the breach or injury suffered. Counsel suggested a sum of UGX. 1.5 billion as general damages.

On the other hand, counsel for the defendants argued that the plaintiffs are not entitled to any remedies sought since they failed to produce any evidence of any damage they had suffered as a result of the defendants' actions. Counsel argued that the suit should be dismissed with costs to the defendants.

This court has already made a finding that the plaintiffs are lawful proprietors of the suit land under issue one. It is therefore hereby declared that the 1st plaintiff is the lawfully registered owner of the suit land comprised of FRV 1073 Folio 11 Plot 7 Block 37 land at Kyempango and land comprised in FRV 1280 Folio 17 Plot 9 Block 37 land at Kyempango, Kibale county in Kamwenge district. It is also hereby

declared that the 2nd and 3rd plaintiffs are lawfully registered owners of land comprised in FRV 1187 Folio 7 Plot 14, Block 36 land at Kyempango, Kibale County in Kamwenge district.

Upon scrutiny of the submissions of counsel for the plaintiffs, it appears that the plaintiffs made a prayer of compensation for the suit land as an alternative to seeking a permanent injunction and an order for the evacuation of the refugees from the same land. Counsel suggested UGX. 500 million as compensation for the value of the suit land for each of the 1st defendant and the 2nd and 3 respondents, together. In the circumstances, given that the refugees have already settled on the suit land, and are cultivating and temporarily developing it, compensation would be the appropriate remedy. However, I find the value UGX. 500 million as suggested by counsel for the plaintiffs to have no basis. I would thus order compensation for the suit land based on the current value of the same as shall be ascertained by a government valuer.

On the prayer of exemplary damages, it is trite law that exemplary damages, also known as punitive damages, serve a distinct purpose within the judicial system. These damages are not intended to compensate the plaintiff for their loss or injury but rather to punish the defendant for egregious behaviour and deter similar misconduct in the future. They are also awardable for the improper interference by public officials with the rights of ordinary subjects ***(see: Ahmed El Termewy Vs. Hassan Awdi & others HCCs No. 95 of 2012).*** In the instant case, it is clear that the 1st defendant's actions were in total disregard of the plaintiffs' property rights. I am therefore inclined to believe that this is the case where exemplary damages should be ordered against the 1st defendant. However, given the purpose of exemplary damages, the figure

of UGX 1 billion as suggested by counsel for the plaintiffs is rather too outrageous. In the circumstances, I shall not order for payment of exemplary damages against the 1st defendant. This is because the plaintiffs will be compensated for the loss of land at market value.

On the prayer of general damages, It is trite law that general damages are the direct probable consequences of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering ***(See: J.K. Patel Vs. Spear Motors Ltd SCCA No. 004 of 1991).***

General damages are guided mainly inter alia by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach. In the case of ***Katakanya & Others vs. Raphael Bikongoro HCCA No. 12 of 2010***, the court held that ***"General damages need not be specifically pleaded, particularised or proved" because the law presumes them to be the direct natural or probable consequences of the act or omission complained of."***

In the instant case, evidence was led that the plaintiffs had crops and animals on the suit land. Crops were destroyed during the settling of the refugees. The 2nd plaintiff testified that he was evicted from the suit land and left the developments on the suit land, his house was demolished, and all his animals died. That he now lives in Kyegegwa. General damages, however, are awarded at the discretion of the court which discretion must however be exercised judiciously ***(see Victoria Fishnets Ltd V The Commissioner General, Uganda Revenue Authority Civil Suit NO. 224 of 2014).*** In the circumstances, I will not award general damages to the plaintiffs.

On the prayer of interest on special and general damages, this court has powers under section 26(2) of the Civil Procedure Act to award interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit. Since no award has been made on general and exemplary damages, no interest is awarded.

On the prayer of costs, section 27(2) of the Civil Procedure Act is to the effect that the costs of, and incident to, all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid. It is also a trite law that costs follow the event, and a successful party is entitled to costs.

In the case of ***Kivumbi Paul Vs. Namugenyi Zulah Civil Revision No. 10 of 2014***, Hon Lady Justice Elizabeth Musoke (as she then was) citing ***Kiska Ltd Vs De Angelias [1969] EA 6***, noted that ***"a successful party can only be deprived of his costs when it is shown that his conduct either prior to or during the course of the suit has led to litigation, which, but for his own conduct might have been averted."***

In the instant case, the defendants were notified of their egregious acts of displacing the plaintiffs on 30th July 2012. A statutory notice of intention to sue was equally served on the defendants on 24th August 2012 but the defendants did not take heed to the plaintiff's request. Instead, the defendants opted for litigation which has taken over 11 years, now. If the defendants had responded to the plaintiffs' request of either evacuating the refugees or settling the matter amicably by

compensating the plaintiffs, this suit could have been avoided. Hence, the costs of this suit are awarded to the plaintiffs against the defendants.

Consequently, Judgment is hereby entered for the plaintiffs in the following terms:

a) A declaration that the 1st plaintiff is the lawfully registered owner of the suit land comprised of FRV 1073 Folio 11 Plot 7 Block 37 land at Kyempango and land comprised in FRV 1280 Folio 17 Plot 9 Block 37 land at Kyempango, Kibale county in Kamwenge district.
b) A declaration that the 2nd and 3rd plaintiffs are lawfully registered owners of land comprised in FRV 1187 Folio 7 Plot 14, Block 36 land at Kyempango, Kibale county in Kamwenge district.
c) A declaration that the defendants are trespassers on the suit land.
d) The 1st defendant shall pay the plaintiffs compensation for the suit land based on the current value of the suit land as shall be determined by a government valuer.
e) Costs of this suit are awarded to plaintiffs.

It is so ordered.

Dated at Fort Portal this 29TH day of APRIL 2024.

Vincent Emmy Mugabo

Judge