

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**CIVIL APPEAL NO 02 OF 2009**

**NATIONAL HOUSING & CONSTRUCTION LIMITED ::::: APPELLANT**

**VERSUS**

**T.N BUKENYA**

**(Suing thru' her attorney Michael Akampurira) ::::: RESPONDENT**

**BEFORE: HON JUSTICE ELDAD MWANGUSYA**

**JUDGMENT**

This is an appeal from the judgment of the Chief Magistrate court of Mengo at Mengo delivered on 21<sup>st</sup> November 2008 by his Worship Kavuma Muggaga in civil suit No.691 of 2007 wherein a declaration was made that the defendant/ appellant unlawfully terminated the tenancy agreement between her and the plaintiff/respondent, that the plaintiff/respondent was entitled to purchase the suit property under condominium law, a permanent injunction restraining the defendant/ appellant from evicting the plaintiff/ respondent from the suit property, 14.000.000/= as general damages, 10.000.000/= as punitive damages, interest of 20%p.a on the decretal sum and costs for the suit.

The background of this suit is that the plaintiff entered into a tenancy agreement with the defendant/appellant sometime in 1988 with the defendant. On 8<sup>th</sup> June 2006; the defendant wrote to all its tenants including the plaintiff, inviting them for a fresh tenancy agreement for purpose of facilitating the sale of the suit property under the condominium

law. Consequently the plaintiff obtained a fresh tenancy agreement, and signed it on 15<sup>th</sup> June 2006.

The respondent continued to receive rent bills and made rent payments thereto which were accepted by the appellant. However on 5<sup>th</sup> October 2006, the appellant terminated the tenancy agreement allegedly on the ground that the respondent was subletting the premises without prior consent of the appellant contrary to the provisions of the tenancy agreement.

The appellant led evidence at the trial that the respondent had breached the said agreement by taking in paying lodgers without the consent of the appellant and as a result it terminated the agreement. It thus filed a counter claim for mesne profits from the date of termination of the agreement at the rate of 288.200/= till the respondent gave vacant possession.

The suit was heard inter-parties and judgment was entered for the respondent, the appellant being dissatisfied with the same instituted this appeal. The appellant was represented by Mr. Isaac Walukagga from MMAKS Advocates while the respondent was represented by Kampuruza from M/S Akampurira & Partners

The appeal is based on the following grounds;

- 1. The learned magistrate erred in law in holding that the appellant unlawfully terminated the tenancy agreement entered into with the respondent**

- 2. The learned magistrate erred in law and fact in holding that the respondent is entitled to purchase the suit property under condominium law**
- 3. The learned magistrate erred in law and fact when he found that the appellant had led no evidence to prove that the respondent had sublet the suit property**
- 4. The trial magistrate erred in law and fact when he ordered that a permanent injunction be issued restraining the appellant from evicting the Respondent from the suit property.**
- 5. The learned magistrate erred in law and fact in holding that the tenancy agreement in force at the time of termination was that of 15<sup>th</sup> June 2006**
- 6. The learned magistrate erred in law and fact when he awarded the respondent general damages in the sum of shs. 14,000.000/= and punitive damages in the sum of 10.000.000/=**
- 7. The learned magistrate erred in law in awarding interest of 20% on the general damages, punitive damages and costs awarded to the respondent.**

Counsel for the respondent raised two preliminary objections on matters of law for determination by this honourable Court.

The first preliminary objection was that the appeal is incompetent and ought to be struck out as a matter of law. He submitted that according to the memorandum of appeal filed, the appeal was lodged in this court on the 2<sup>nd</sup> day of March 2011, though the memorandum of appeal was filed on the 9<sup>th</sup> January 2009, it was not until the 2<sup>nd</sup> day of March 2011 that it was formally lodged in court and signed by the Registrar and that no

explanation was advanced for this inordinate delay. Counsel thus cited sec 79 of the Civil Procedure Act which provides that:-

1. Except as otherwise specifically provided in any other law, every appeal shall be entered:-
  - a) Within 30 days of the date of the decree or order of court; or
  - b) Within seven days of the date of the order of the registrar, as the case may be, appealed against, but the appellate court may for good cause admit an appeal though the limitation prescribed by this section has elapsed.
2. In computing the period of limitation prescribed by this section the time taken by the court or Registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is found shall be excluded.

Counsel for the respondent thus submitted that the decree appealed against was dated 8<sup>th</sup> January 2011; in effect the memorandum of appeal should have been lodged in court by 8<sup>th</sup> February 2011. This appeal is therefore barred caught by limitation and there is no evidence on the record to show that the appellant has sought any order from this court for extension of time within which to lodge this appeal.

The respondent relied on **MARIA ONYANGO OCHOLA & ORS V J.HANNINGTON WASSWA SSEMUKUTO & CO (1996) HCB 43**, Tsekooko J( as he then was) held that the appeal filed out of time without leave of the court is incompetent and ought to be struck out. Counsel thus submitted that the present appeal was filed out of time hence incompetent and should be struck out.

The 2<sup>nd</sup> preliminary objection is that the decree appealed against is fatally defective, he cited page 40 of the record for the alleged defects; that it is

dated 8<sup>th</sup> January 2008 where as the judgment of court is dated 21<sup>st</sup> November 2008 and that the decree could not have been extracted before the judgment and that the decree was signed by the Registrar and not the magistrate s required by O.21 r. 7 (3) of the Civil Procedure Rules. The gist of the complaint is that the decree filed herein is defective on account of wrong dates and being signed by an officer who had no authority as such these are matters of law, thus failure to comply with the rendered the decree materially defective and no decree as such. Without a decree, the memorandum of appeal stands alone. He thus cited **W.T.M KISULE V NAMPEWO (1984) HCB 55** where Karokora J as he then was held that an appeal to the high court must be against the Magistrate Grade one's decree/ order and the decree/ order must be extracted and filed together with the memorandum of appeal.

In rejoinder, counsel for the appellant contended that he did not find any legal basis in the respondent's contention that the appeal was lodged out of time, he thus submitted that the judgment was delivered on the 21<sup>st</sup> November 2008 and the decree was issued on 1<sup>st</sup> January 2009 and not 1<sup>st</sup> January 2008 which is clearly typographical error. The memorandum of appeal was lodged on 9<sup>th</sup> January 2009 which was within the 30 days stipulated by S. 79 of the Civil Procedure Act, he thus submitted that this preliminary objection did not have any merit and thus invited this court to disregard the same while on the second preliminary point it was submitted that the signature on the decree and judgment was one and the same as it was that of His Worship Kavuma Muggaga, and that the authority cited by the respondent is clearly distinguishable as this is not a matter where a decree was not attached to the appeal, he thus concluded that there was a valid decree indicating the terms of the judgment duly signed by the trial magistrate

From the record it is clear that the issue of dates was merely a typographical error and thus this preliminary objection must fail as it lacks merit while the case referred to by the respondent on the decree is one

which is clearly distinguishable from the instant case, the preliminary objection is therefore overruled.

The appellant's counsel argued grounds 1, 3 and 5 together, 2 and 4 and lastly 6 and 7. The respondent's counsel took the same sequence.

The basis of the trial magistrate's decision on the finding of unlawful termination of the tenancy agreement was essentially premised on the following; that the respondent was a protected tenant as stated in the case of **CALEDONIAN SUPER MARKET LTD V KENYA NATIONAL EXAMINATION COUNCIL (2002) EA** that the tenancy agreement would not be terminated without notice and that it was the policy of the appellant to give the respondent the first opportunity to purchase the flat. It was not disputed that the parties had executed a tenancy agreement and that clauses 2 (xii) and 4 (i) permitted the appellant to re- enter the suit property if there was breach of any of the provisions of the tenancy agreement. Mr. Walukagga submitted the tenancy under termination was that of 1988 as that of 2006 had not been executed by the parties. He also submitted that the instant case was distinguishable from the case of **CALEDONIAN SUPER MARKET LTD V KENYA NATIONAL EXAMINATION COUNCIL** (supra) wherein the respondent a protected tenant was being evicted by the appellant who even after the respondent had lost its protection status had to be issued with a notice of termination as required in Shops, Hotels and Catering Establishment Act (201). In the instant case the appellant was not enjoined under the law to furnish notice to the respondent before termination, the party's relationship was governed by the tenancy agreement of 1988 (exhibit D3)

Mr. Walukagga further submitted that the learned magistrate erred when he applied the policy of the appellant to give priority to sitting tenants to purchase the flat as a basis for his finding on unlawful termination. This was so since the appellant only enjoyed its right to terminate the tenancy agreement for breach provided the option to purchase had not been

exercised as yet. The invitation to sign a tenancy agreement so as to start the process of selling the flats was sent after the respondent tenancy had been terminated. And that the policy for sale only applied to those with valid tenancy agreement, the respondent did not have a valid tenancy agreement to enjoy this right as a sitting tenant. He thus submitted that there was no reason for the learned trial magistrate to find that the tenancy had been unlawfully terminated on this ground of the option to purchase.

On ground 3, Mr. Walukagga submitted that the appellant led evidence to prove that the respondent had parted with possession and/ or sublet the suit property to lodgers. He referred this court to pages 24 and 25 of the record.

***....the daughter (Maureen Agaba) was my classmate at law school. She is the one who told me that there was a vacant bed at their flat, Block 7B2 and I was looking around for accommodation in the flat so she introduced me to Ninsiima Clare who was in charge of collecting the money. So we agreed on how much to pay and asked me to pay good will to Maureen and Ninsiima 150.000/=...they did not give me a receipt. The next payments i decided to go to Akampurira's office.... I gave Mr. Akampurira 600,000/=....Mr. Akampurira never gave me a receipt'***

DW3, Atuhaire Charity also testified on page 29 of the record that she used to pay rent to Clare and that she was given no tenancy agreement. Counsel further submitted that DW2 and DW3's evidence was never challenged in cross examination to show that they were telling lies. The suit property according to the appellant's records was left to T.N Bukenya; the occupants without the appellant's knowledge were now Akampurira, daughters and students of LDC who were paying rent. As such there was

no doubt that TN Bukenya had parted with possession of the suit property and thus submitted that there was subletting of the suit property.

On ground 5 of the appeal, the learned magistrate admitted the tenancy agreement dated 29<sup>th</sup> April 1988 in evidence as exhibit. In his evidence DW1 stated that the agreement that was terminated was that of 1988 and that the termination letter clearly mentioned that it's this agreement that had been breached hence the re- entry. The 2006 agreement had not been signed by both parties and was therefore not in force. Counsel submitted that it was conjecture for the learned magistrate to say that the agreement being terminated was that of 2006 which was never mentioned by the appellant.

In reply, learned counsel for the respondent argued ground 1,3 and 5 together. He stated that it was not disputed that there was a tenancy agreement between the parties but the issues for determination were whether the operating tenancy agreement was the one executed between the parties on 29<sup>th</sup> April 1988 or the one of 15<sup>th</sup> June 2006 and whether such tenancy agreement was lawfully terminated.

On this point, the trial magistrate found that the operating agreement was the one signed on 15<sup>th</sup> June 2006. Counsel thus submitted that the trial magistrate was justified in so holding for the following reasons, DW 1, who was the CEO admitted through his affidavit and in court that the appellant company and the respondent had executed a new tenancy agreement dated 15<sup>th</sup> June 2006; there was ample evidence from the testimony of PW1 and DW2 to support a finding of fact that there was a new tenancy dated 15<sup>th</sup> June 2006, the 1988 tenancy agreement was neither pleaded nor attached to the WSD and the introduction of the same in course of trial was clearly a departure from the pleadings and offended O.6 r.6 and



7 of the CPR. He thus submitted that the trial magistrate was justified in so holding based on the reasoning that clause 1 of the tenancy agreement dated 15<sup>th</sup> June 2006 provided that in case of termination either party shall give the other not less than 4 weeks notice in writing; the letter terminating the tenancy was based on the tenancy agreement. No such notice was given to the respondent contrary to the terms of the said tenancy agreement. The appellant terminated the agreement on allegations of subletting which were neither proved nor substantiated before or at the trial. The appellant did not give the respondent an opportunity to be heard on these allegations which was a breach of natural justice. He sought to rely **on RIDGE V BALDWIN (1963)2 WLR 935** and thus concluded that grounds 1, 3 and have no merit.

In rejoinder, Mr. Walukagga maintained that the tenancy agreement that was terminated was that of 1988 which was admitted in evidence and had not be objected to by the respondent and that the termination of the same arose out of subletting which was contrary to the provisions of the same agreement. That the argument of that there was no subletting because no receipts for payment was to simply derail court from the real issue in controversy as evidence of subletting had been led by the defence witnesses who admitted that they had been paying rent to Mr. Akampurira. He thus maintained his argument that the trial magistrate erred in finding that the appellant had led no evidence to prove subletting.

The 1<sup>st</sup> and 3<sup>rd</sup> grounds of appeal hinge on the issue as to whether or not the appellant unlawfully terminated the tenancy agreement with the respondent. The circumstances leading to the termination of the tenancy agreement were that following a tip off from (DW 2) persons other than the tenant to whom the flat had been rented were found occupying it.

According to this witness she had been an occupant of the flat and had paid some money to Mr. Akampulira Michael, the Attorney through whom the plaintiffs file this suit. She was not given any receipts because quite expectedly nobody would issue a receipt for transaction that was clearly prohibited by the tenancy agreement. Mr. Michael Akampulira the Attorney through whom the respondent filed this suit explained the presence of his family members as part of the family of the plaintiff but the plaintiff whom I believe is the only credible person to explain the presence of 'strangers' in the flat to the Landlords did not even testify in the trial.

I would not fault the Landlord for evicting 'strangers' from the flat and the tenant who is supposed to defend them from their eviction if indeed they are her family members does not explain their presence in the trial of her alleged breach of tenancy agreement. I do not believe that the occupants of the flat were family members of the tenant given the evidence adduced by the appellant that occupants were paying for their stay. The occupation of this flat by persons other than the tenant with whom the appellant has a tenancy agreement were in the circumstances of this case in breach of the tenancy agreement and in view of the breach the respondent cannot seek protection of the same agreement.

This is irrespective of whether the agreement in force is the one of 1988 or that of 2006. So to answer the 1<sup>st</sup> and 3<sup>rd</sup> grounds of appeal this Court finds that the learned trial magistrate erred in law in holding that the appellant unlawfully terminated the tenancy agreement entered into with the Respondents. The appellant was entitled to terminate the tenancy agreement with the respondent following investigations and finding that the respondent was no longer occupying the flat and had not informed the appellant of the persons whom she had left in the flat.

Arising out of this finding Court also answers the 3<sup>rd</sup> ground in the affirmative. It is found that the trial magistrate erred in law and fact when he found that the appellant had no evidence to prove that the respondent had sublet the suit property. On a balance of probabilities there was proof of subletting as I have already found.

The above finding would dispose of this appeal. I will still go ahead to resolve the rest of the grounds of appeal.

On ground 2 and 4 counsel submitted that a sitting tenant had to execute a tenancy agreement with the appellant and subsequently the appellant would offer the particular flat to the sitting tenant for purchase. The respondent's tenancy agreement had been terminated; there was therefore no valid tenancy agreement between the parties. Thus the trial magistrate should not have found that the respondent was entitled to purchase the suit property which at that stage it had even not been offered to her as a condominium unit while on ground 4, he submitted that there was no basis for the learned magistrate to issue a permanent injunction restraining the appellant from evicting the respondent. The relationship between the parties was governed by the tenancy agreement and court could therefore not interfere with the appellant's right to sever its relationship with the respondent if there were grounds to so. The suit property had not been sold to the respondent and was still property of the appellant who could choose who should or should not occupy it. The only remedy for the respondent in case the court had found that the tenancy was unlawfully terminated would be damages.

Submitting on ground 2 of the appeal, counsel for the respondent stated that the trial magistrate was justified in holding as he did that the respondent was a sitting tenant and entitled to purchase the suit property

as government policy. For this he relied on the testimony of DW1 that the sitting tenants were given 1<sup>st</sup> priority to purchase the flats as it was a policy of government, DW1 also confirmed in cross examination that the respondent was a sitting tenant. He thus submitted that there was no merit in this ground of appeal while on ground 4, counsel submitted that every citizen of Uganda has a stake in the said flats and that the trial magistrate ordered a permanent injunction to enable the respondent exercise the right to purchase the flat and prevent abuse of authority by the officers of the company and prayed that this ground did not have any merit. In response counsel for the appellant maintained that the entitlement to purchase the suit property was limited to tenants with valid tenancy agreement. He sought to rely on the basic rules of contract and thus submitted that these dictate there must be an offer and that the respondent could only contend to be entitled to purchase if an offer was made. In the instant case the tenancy was terminated before any offer was made by the respondent and all that happened was a mere notification that the appellant would offer for purchase the suit property to sitting tenants with valid tenancy agreements, this was not available to the respondent as their tenancy had been terminated. Mr. Walukagga thus invited this court to find as so.

On the issue of a permanent injunction against a Landlord the counsel for the appellant submitted that by doing so the trial magistrate had handed over the suit property to the respondent/tenant when this was not a suit for recovery of the suit property by the respondent that the remedy lay in damages even if court was to find as it did that the appellant wrongly terminated the tenancy agreement.

After a careful evaluation of the evidence adduced on record and order of injunction granted by the trial magistrate the finding of this court is that there was no basis for the Respondent to be given a right to purchase the suit property under the Condominium Law as the respondent was in breach of the tenancy agreement. Secondly even if there was no breach

of the tenancy agreement the Landlord remains with the prerogative to negotiate with the occupant of the flat as to the terms of sale under the condominium Law and this court would not interfere with a Landlord's right over his or her property especially when the relationships are governed by a tenancy agreement.

Grounds 6 and 7 were argued jointly, counsel submitted that the trial magistrate did not have jurisdiction to award damages to the tune of 24.000.000/= against the appellant. The suit was tried by a magistrate grade 1 whose pecuniary jurisdiction under section 11 of the Magistrates Courts Act (Amendment Act) No. 7 of 2007 is 20.000.000/= he thus submitted that this award was excessive and should be set aside. On ground 7 he submitted that since the trial magistrate did not have the pecuniary jurisdiction to award 24.000.000/= as damages, it follows that the interest awarded on these damages should be set aside as the magistrate had no jurisdiction in the first place. Counsel also invited court to interfere with the magistrate's discretion to award interest at the rate of 20% from the date of filing the suit. The correct principle of the law is that interest on unascertained damages runs from the date of judgment and not from the date of filing the suit, he thus cited **SIETCO V NOBLE BUILDERS (U) LTD SCCA NO.31 OF 1995**, while quoting with approval the decision of **MUKISA BISCUITS MANUFACTURING CO. LTD V WEST END DISTRIBUTORS LTD (NO.2) 1970 EA 592**, it was held as follows;

***'..Where however damages have to be assessed by the court, the right to those damages does not arise until they are assessed and their interest is only given from the date of judgment'***

He thus submitted that the error of awarding damages beyond jurisdiction was compounded by the order for the interest on these damages that were not assessed until judgment to run from the date of filing the suit.

On ground 6, it was counsel for the respondent's submission that the learned magistrate was correct in awarding the said amount of damages basing on the reasons that in the pleadings the respondent was seeking unspecified general; and punitive damages, a declaration that the plaintiff/ respondent was a lawful sitting tenant and a permanent injunction; the magistrate awarded compensatory damages of 14.000.000 which was well within his jurisdiction, the respondent was seeking inter alia unspecified general and punitive damages as such the question of pecuniary jurisdiction did not arise and further that at the commencement of the trial no objection had been made as to the jurisdiction. Counsel thus submitted that the assessment of damages is principally the duty of the trial court and that the appellate court will not engage in the activity of assessment of damages except in the most exceptional circumstances. He cited **FREDRICK ZAABWE V ORIENT BANK & ORS SCCA NO.4 OF 2006**.

He further submitted that the principle of the appellate court in the province of damages was well articulated by Green **LJ IN FLINT V LOVELL (1935)1 KB 360** as;

**An appellate court will be disinclined to reverse the finding of the trial judge as to the amount of damages merely because it thinks that had it tried the case in the first instance, it would have given a greater or lesser sum. In order to justify reversing the trial judge's finding on the question of amount of damages, it will be generally necessary that the appellate court should either be convinced;**

- i) That the trial court acted upon some wrong principle**
- ii) That the amount awarded was so extremely huge or very small as to make it in the judgment of the appellate court, an entirely erroneous estimate of the damages to which the plaintiff is entitled.**

He thus prayed that since counsel for the appellant had not shown by way of any evidence that the trial judge acted on some wrong principle or that the estimate of damage was high or very low to justify any interference by court, he prayed that no merit should be found in this ground. As regards interest that was awarded on damages and costs, counsel submitted that these were justified for the reasons that; the award of interest on a decree is a matter entirely within the discretion of the court and that the interest awarded by court on the decretal amount cannot be taken into account while valuing the subject matter for pecuniary jurisdiction of the court, he thus relied on **UGANDA COMMERCIAL BANK V YOLAMU TWALA (1999) KALR 929 AND PREMCHANDRA SHENOI & ANOR VS. MAXIMOV OLEG PETROVICH SCCA NO.9 OF 2003** where the court held that interest of 20% was appropriate in commercial transaction.

He sought to distinguish the case of **MUKISA BISCUITS MANUFACTURING CO. LTD V WEST END DISTRIBUTORS LTD (NO.2) 1970 EA 469 CITED IN SIETCO V NOBLE BUILDERS (U) Ltd** (supra) is clearly distinguishable. The principle laid down in that case is that; 'in cases of personal injuries, the interest begins to run from the date of judgment'. He thus contended that the instant case was not a personal injury case and therefore the case cannot assist the appellant. Additionally it was his submission that in cases where a successful party has been deprived of the use of goods or money, interest is awarded from the date of filing the suit. For this proposition counsel cited Judicial Hints on Civil Procedure, Vol 1 by R.Kuloba pg 96.

He conclusively submitted that the learned trial magistrate properly directed his mind on the law and evidence in this case and came to conclusions. He thus prayed that the judgment of the court should be allowed to stand and that the appeal should be dismissed with costs as it lacks merit.

In reply, Counsel for the appellant stated that the law on pecuniary jurisdiction of the trial magistrate is that he could not make any award beyond 20.000.000/= . It does not matter that the award is split into what the respondent calls punitive damages and compensatory damages; the trial magistrate was bound to follow the law. He also stated that the position of the law on interest on unascertained damages is that it runs from the date of judgment

Two issues are raised by these submissions. The first issue is as whether or not the trial magistrate had jurisdiction to award a total sum of shs 24.000.000= for general and punitive damages. This sum was for 14.000.000= general damages and 10.000.000= punitive damages. If itemised as the trial magistrate did the amounts fall within the jurisdiction of the Grade I magistrate which is 20.000.000=. in the case of **Joseph Kalingamire vs Godfrey Mugulusi High Court Civil suit No. MMEK 10 of 200**) (unreported) His Lordship Justice Musoke Kibuuka when face with the issue as whether a magistrate had jurisdiction to award a sum of shs 2.400.000= instead of 2.000.000= had this to say;

***“although, considering the circumstances of Uganda today, that provision may seem quite ridiculous, it remains the law creating jurisdiction for Grade I magistrate in Civil matters.***

***It follows, that when a Grade I magistrate makes an order awarding general damages the sum of which exceeds the monetary jurisdiction of shs 2.000.000= set by the law in Section 219 of the Magistrates’ Courts Act, 1970, such magistrate would be exercising jurisdiction vested in him. The High Court would appropriately invoke the provisions of***



***Section 84(a) of the Civil Procedure Act and make such order as it thinks fit.”***

I agree. A magistrate awarding shs 24.000.000= general and punitive damages exceeds his or her jurisdiction. The monetary jurisdiction of shs 20.000.000= provides the ceiling beyond which the total award should not exceed otherwise by itemising the damages as the trial magistrate did in this case would mean that by granting an award of less than 20.000.000= for each item a trial magistrate may award amounts will in excess of his or her jurisdiction.

The second issue is as to when the interest in awards of general damages and punitive damages which were not known at the time of filing accrues. From the authorities cited the position seems to be that interest starts accruing when the awards are made and not at the time of filing and I make a finding that even if the damages awarded were sustainable, interest would accrue from the time of judgment till payment in full.

In the case of **Joseph Kalingamire vs Godfrey Mugulusi** (supra) His Lordship Justice Musoke Kibuuka made an order awarding shs 1.200.000= to the plaintiff. I would not make a similar order in this case because of the findings as to the breach of tenancy by the plaintiff.

In conclusion the appeal is allowed. The judgment and orders of the learned trial magistrate are set aside with costs to the appellant in this Court and the court below.

**Eldad Mwangusya**

**J U D G E**

**23.02.2012**

**23/02/2012**

Akampunguza for respondent

Wangoda Emma for appellant

Clerk - Milton

**Court:**

Judgment read in open chambers

**John Eudes Keitirima**

**DEPUTY REGISTRAR**

**23/02/2012**