THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: ODOKI CJ, KATUREEBE, OKELLO, TUMWESIGYE AND KISAAKYE, JJ.SC)

CIVIL APPEAL NO 14 OF 2009

BETWEEN

HORIZON COACHES LTD} :::::::::::::::::::::::::::::: APPELLANT

AND

1. **EDWARD RURANGARANGA**
2. **MBARARA MUNICIPAL COUNCIL :::::::::::::: RESPONDENTS**

[Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Kitumba and Byamugisha JJA) dated 11 August 2008 in Civil Appeal No 34 of 2007]

Appeal-recovery of land, damages and costs of the suit-bonafide purchaser-cause of action-fraud-setting aside of the judgment and the decree-dismissal of a suit with costs-notice of appeal out of time-lack of parties-rules 14 and 83 of the supreme court rules-dominus litis-leave of court-rule 98 of the supreme court rules-locus standi-propriety rights

JUDGMENT OF ODOKI, CJ

Introduction:

This is an appeal from the decision of the Court of Appeal dismissing the appellant's appeal and confirming the judgment and orders of the High Court in a land dispute between the parties. The appeal raises important issues relating to the protection accorded to tenants in occupancy on urban statutory leases which were revoked by the Constitution and the defeasibility of a certificate of title on ground of fraud.

Brief Facts:

The facts as agreed in the lower court were as follows. As from 1st March 1995, Uganda Transport Company Ltd (UTC) became the registered proprietor of Plots 24 – 30 Mbaguta Road, comprised in LRV 357 Folio 15, measuring 1.109 acres. It was for the purposes of a bus depot/garage.

Since 1995 the Ankole District Administration (later succeeded by Mbarara Municipal Council (2nd Respondent) was the owner of the land adjoining the said bus depot/garage, described as Plots 32 – 40 Bishop Wills Road/Mbaguta Street, measuring 0.826 acres. It was for the purpose of a public bus station. Infrastructure was developed thereon.

In 1993, the 2nd respondent got a statutory lease over all the public land including the suit land in the whole area of its jurisdiction. It was also the controlling authority with power to allocate and grant leases over such land. By a lease agreement dated November 1992, the 2nd respondent let to the 1st respondent a space on the said plots 32 – 40, marked M50 for a period of 20 yeas. The 1st respondent developed the space. On 13 September 1995, upon transfer from UTC, Mukwano Enterprises Ltd, (the 4th defendant at the trial) was registered as the proprietor of the said LRV 356 Folio 15, area 1.109 acres. On 24 October 1995, Mukwano Enterprises Ltd executed a transfer and applied to transfer LRV 357 Folio 15, area 1.109 acres to the appellant.

On 26 October 1995 at 3.00 p.m, under Instrument No 27434 the suit land (i.e. Plots 32 – 40) was entered on the certificate of title for LRV 357 Folio 15 (until then having only plots 24 – 30) and the area was changed from imperial metric and increased to 0.783 hectares (1.935 acres). On the same day at 3.30 p.m, the appellant was under Instrument 274864, registered as proprietor of the whole land and Charles Muhangi, a Director of the Appellant, immediately collected the certificate of title. On 25 November 1995, the appellant evicted the respondents and destroyed the 1st respondent's developments and property.

The respondents brought the suit in the High Court seeking recovery of the land, damages and costs of the suit. The appellant in its defence pleaded that it was a bona fide purchaser from Mukwano Enterprises (the 4th defendant). The Attorney General (1st defendant) in his defence pleaded that the Registrar of Titles added the suit land to LRV 357 Folio 15, by way of correcting an error after 40 years. The 4th defendant in its defence denied ever owning the suit land or selling and transferring it to the appellant. The respondents contended that the inclusion of plots 32 – 40 was fraudulent as a result a conspiracy with Lands Officials and the appellant together with Mukwano Enterprises.

The trial judge in the High Court found that there was fraud, entered judgment for the respondents and made the following orders:

> ***"1. Judgment is entered for the plaintiffs.***
>
> ***2. The title held by Horizon Coaches Ltd shall be cancelled so that it retains Plots 24 – 30 Mbaguta Road only.***
>
> ***3. The rest of the plots 32 – 40 Mbaguta Road shall revert to the plaintiff.***
>
> ***4. The 1st plaintiff's lease from the 2nd defendant still subsists.***

5. ***The 1st, 2nd and 3rd defendants shall pay the 1st plaintiff as follows:***

   (a) ***Shs.10,000,000/= for embarrassment by the high handed eviction.***

   (b) ***Shs.80,000,000/= for the value of the buildings and stock in trade.***

   (c) ***The 1st, 2nd, and 3rd defendants shall pay to the 1st plaintiff Shs.50,000,000/= mesne profits.***

6. ***The 1st, 2nd and 3rd defendants shall pay to the 2nd plaintiff Shs.25,000,000/ mesne profits.***

7. ***The 1st, 2nd and 3rd defendants shall pay to the plaintiffs costs of the suit.***

8. ***The 2nd defendant shall pay the 4th defendants costs."***

The appellant appealed to the Court of Appeal against the judgment and orders of the High Court on several grounds. The Court of Appeal dismissed the appeal. The appellant has now appealed to this Court on the four grounds.

Grounds of Appeal:

1. The learned justices of the Court of Appeal erred in law when they held that the issue of cause of action in this case could not be raised on appeal.

2. The learned Justices of the Court of Appeal erred in law when they held that the appellant had obtained the suit property fraudulently without reevaluating evidence as the first appellate Court.

3. The learned Justices erred in law when they held that the suit property be returned to the 1st respondent.

4. The learned Justices erred in law erred in law when they confirmed the remedies granted to the respondents.

The appellant prayed for the appeal to be allowed, and the judgment and decree of the Court of Appeal to be set aside with orders that;

(a) The judgment, decree and orders of the High Court be set aside and the respondents suit be dismissed with costs.

(b) The respondents pay the costs of the Court of Appeal and costs of this appeal.

The respondents filed a notice of grounds for affirming the decision of the Court of Appeal. The additional grounds were framed as follows:

> ***"1 The notice of appeal was served out of the time without proper extension.***
>
> ***2. Other parties, namely the Attorney General, Waiswa Moses and Mukwano Enterprises Ltd, affected by the decree appealed from were not made parties to the appeal."***

The appellant was represented by Mr. John Matovu and Matovu Advocates, while the respondents were represented by Mr. Paul Byaruhanga Advocates. Both parties filed written submissions.

Learned counsel for the appellant argued grounds 1 and 2 separately and grounds 3 and 4 together. He started by arguing ground 2 followed by grounds 3 and 4 together and finally argued ground 1.

I propose to consider ground 1 first followed by ground 2 and finally grounds 3 and 4 together.

Preliminary Objections by the Respondent:

Before I consider the grounds of appeal, I wish to deal with the preliminary objections that were raised by counsel for the respondent. The first objection was that the record of appeal did not conform to rules 14 and 83 of the Rules of this Court in that on many pages, the lines were not numbered and that the index and pagination did not agree. Furthermore, the order of documents, rulings and judgment was confused. He submitted that a lot of materials which were not part of the record were included in the record and the whole record was difficult to follow. It was his prayer that the record be struck out and the appeal dismissed.

The second objection was that the appeal lacked parties as three of the parties namely the Attorney General, Waiswa Moses, t/a Twidha and Twiza Auctioneers and Mukwano Enterprises Ltd who were defendants in the trial Court were omitted from the appeal.

In reply, counsel for the appellant submitted that the complaint about the contents of the record of appeal could not be a ground for striking out the appeal as the Court has power under rule 83(3) of the Rules of the Court to exclude any documents from the record on application. He contended that no such application had been made, nor had it been shown that the respondents had been prejudiced by the record.

As regards the contention regarding lack of parties, a counsel for the appellant submitted that the Rules of the Court do not provide that all persons served with the notice of appeal must be made parties to the appeal. He argued that the law was that an appellant is ***dominus litis*** and cannot be forced to sue any person against his will. Learned counsel also contended that the notice of appeal was served out of time and that the matter was argued in the Court of Appeal.

I agree with counsel for the respondent that the record of appeal was not properly prepared in accordance with the Rules of Court. However, counsel of the appellant indicated in his written submissions that the respondents would seek leave of the Court under Rule 98(b) of the Rules of the Court to raise the two preliminary objections. No such leave was sought and obtained to make the objections. Therefore, the objections are incompetent. Moreover, it has not been shown that any prejudice has been caused to the respondents. I therefore find no merit in the preliminary objections and would overrule them.

Ground 1: Lack of Cause of Action:

The complaint in ground 1 is that the learned Justices of the Court of appeal erred in law when they held that the issue of cause of action in this case could not be raised on appeal. Learned counsel for the appellant referred to the leading judgment of Mpagi-Bahigeine JA, where she stated,

> ***"Regarding ground 1, as to the lack of cause of action it was never pleaded nor raised during the trial …… Learned counsel has now raised it in his submissions. It is well established that the issue of lack of cause of action being a question of law and fact ought to be raised at the earliest opportunity and on pleadings."***

Learned counsel argued that the decision of this Court in ***Bitarabeho vs Kakonge*** SCCA No 4/2000 on which the learned Justice of Appeal relied was distinguishable from the present case in that ***Bityarabeho's case*** was not based on lack of cause of action but rather whether the respondent was a wrong party to the suit; and the case was not based on pure point of law but on evidence. It was counsel's submission that it is trite law that lack of cause of action is a pure point of law which goes to jurisdiction of the Court. He relied on the case of ***Rvs Secretary of State for Social Services*** (1989) 1 ALL ER 1047 where Lord Woolf said at page 1056,

> ***"However we make it clear that in our view the question of locus standi goes to the jurisdiction of the Court and therefore the approach adopted by the Department in this case is not appropriate."***

Counsel also referred to the case of ***Kenya Commercial Bank Ltd vs Osebe*** (1976 – 1985) EA 205 for the proposition that if the point taken is one of illegality or jurisdiction, whether it has been raised in the lower Court or not, the appellant Court ought to entertain it. It was counsel's contention that in this case the appellant had always maintained that the respondents had no ***locus standi*** to bring the action as they had no interest in the disputed land. He further argued that even if the point is one of fact, there is enough material on the record upon which the Court can decide the issue the point can be taken on appeal. He relied on the authority of Estate ***Shamfi Visram vs Bhati*** 1965. EA 789 for this proposition.

In this case, he submitted, there was sufficient evidence to prove that the 1st Respondent had unregistered lease for 20 years which according to counsel gave him no locus to file a suit. He also submitted that there was evidence from DW2 that the 2nd Respondent's Statutory Lease had expired by the time it became the 2nd Plaintiff in the suit, and therefore had no ***locus standi*** to bring the suit.

Learned counsel for the respondent's supported the decision of the Court of Appeal that the issue of lack of cause was a matter of mixed fact and law and that on the authority of the case of ***Bitarabeho vs Kakonge*** (supra), it could not be raised for the first time on appeal. Counsel also relied on the decisions in ***Porbhubhau Morarj vs Jaghabhai Mororji*** (1958) EA 277, ***Tanganyika Farmers vs Nyamwezi Development Coop Ltd*** (1960 EA 620, Alwo ***Abdulahman Sagatah vs Abed Ali*** (1961) EA 767 and ***Derran vs Harid*** as (1949) 16 EACA 35. Counsel for the respondent's submitted further that to argue that the respondents did not enjoy rights on Plots 32 – 40 and that no such rights were taken away by the appellant is to contradict admitted facts No 2, 3 and 4. He asserted that the 2nd respondent owned Plots 32 – 40 before the statutory lease was granted and continued to own it during the statutory lease and that the abolition of the

statutory lease did not take away this particular ownership. He relied on the decision of this Court in ***Kampala District Land Board and Another vs National Housing and Construction Corporation*** [2005] EA 69. It was his contention that such abolition of statutory leases and non-registration of the 1st respondents lease did not bestow ownership of Pots 32 – 40 on the appellant.

It is well established that the issue of lack of cause of action ought to be raised at first opportunity in the pleading and conversed in the trial court because it is an issue of mixed law and fact, which requires evidence to be adduced to resolve it. See ***Christine Bitarabeho vs Edumid Kakonge*** (supra).

In the present case, the issue was not raised in the written statement of defence, not argued in the trial court. In this case the criticism against the Court of Appeal cannot be justified.

However, it seems to me that the issue was indirectly argued in the trial court where the first issue framed was ***"whether the plaintiff has proprietary interest, in the land in question."*** In addressing this issue, the learned trial Judge said,

> ***"It is not in contention that in 1974 Mbarara Municipal Council got a Statutory Lease over the area it administered, including the plots in question. This Statutory lease as with all other Municipal Councils in the country, subsisted until the 1995 Constitution abolished it and it jurisdiction ceased to exist when the Land Board for the area was operationalised under the Land Act 1998. Hence as lease holder by virtue of statute, the Municipal Council, had proprietary rights such as rent from the sub-leasers in the area in question.***
>
> ***The proprietary rights were not challenged by UTC or Mukwano Enterprises and were not disputed. Horizon Coaches***

extinguished them by incorporating plots 32 – 40 Mbarara Road into its title in 1995."

It should be observed that at the time the appellant obtained registration over the suit, land in 1995, the 1st respondent's lease of 20 years was still in existence and so the 1st respondents brought action against the appellant for fraudulently transferring the suit land in its name, and destroying his property.

The fact that the statutory leases were abolished did not mean that the interest or rights of the 1st respondent as tenant in occupancy were extinguished. The controlling authority had passed from the Urban Authorities to the District Land Boards when the Land Act was enacted. The rights of tenants in occupancy whether lawful or ***bona fide*** occupants, and that protection under the Constitution and the Land Act were considered in detail by this Court in the case of ***Kampala District Land Board vs NH&CC*** (supra) , relied on by the respondents.

In my view, therefore even if the issue of lack of cause of action had been considered by the Court of Appeal, it would have come to the conclusion that the 1st respondent had a cause of action by virtue of the proprietary interest it had in the unexpired lease which was extinguished by the appellant. The appellant was also protected by law as a tenant in occupancy.

However, it seems that the 2nd Respondent could only have an interest in the suit land as a transitional measure until the land was vested in the District Land Board in accordance with the Constitution (Consequential Provisions) Act Cap.1.

Accordingly, I find no merit in ground 1, which should fail.

Ground 2: Proof of Fraud

The appellant complains in the second ground of appeal that the learned justices of the Court of Appeal erred in law when they held that the appellant had obtained the suit property fraudulently without re-evaluating the evidence as the first appellate Court. In arguing this ground of appeal, counsel for the appellant raised three criticisms against the decision of the Court of Appeal namely that:

(1) The Court erred in holding that the 1st respondent had interest in the suit property;

(2) The Court erred in holding that the 1st respondent was a bona fide occupant of the suit land;

(3) The Court erred in finding fraud against the appellant.

On the first criticism, learned counsel submitted that had the Court of Appeal re-evaluated the evidence, it would have found that the 1st respondent had unregistered lease for 20 years on the suit property, and that any lease or sublease for more than 3 years must be registered, and since it was not so registered, it was tenancy at will. He relied on the case of ***Figueired Vs Moorings Hotel*** (1960) EA 26.

He argued further that an unregistered lease gives no protection against the rights of third parties, citing the case of ***Grosvenor Vs Rogan Kamper*** (1974) EA 446 to support his argument. It was his contention that the 1st respondent's unregistered lease gave him no such interest in the suit property capable of being protected by law and only conferred on him a right to enforce a contract against the 2nd Respondent in specific performance. Therefore, he submitted the appellant could not be guilty of fraud against a person with no interest to protect the suit property.

Learned counsel further submitted that the Court of Appeal failed to consider the evidence that the 1st respondent's lease had expired in 2002 and was not renewed, and secondly that the Appellant's lease had expired in 2004 and was renewed without fraud on its part.

It was counsel's contention that when the appellant applied for a fresh lease in 2004, the 1st respondent's lease had expired and therefore the land was available for grant to the appellant. He argued that the provisions of Section 95(4) of the Land Act do not cover the 1st Respondent although he developed the land because the section provides,

> ***"A person whose lease had expired by the time of coming into force of the Constitution and who had partially developed the land shall be entitled to a fresh grant upon application to the board."***

The second criticism in this ground was that the Court of Appeal failed to consider whether there was evidence to prove bona fide occupancy, and whether the land under bona fide occupancy could not be allocated to another person. Learned counsel submitted that under Section 29 of the Land Act, a bona fide occupant must occupy the land without consent of the owner without challenge from his and that under Section 29(4) he should not be on the land under a license from the registered proprietor. Counsel relied on the decision of this Court in the case of ***Kampala District Land Board and Anor Vs. National Housing and Construction Corporation*** (supra) for the proposition that such occupation must be adverse to the registered owner. On the contrary, counsel submitted, the evidence of the 1st respondent shows that he occupied the suit land with the consent of the 2nd respondent, and that he was under licence paying rent and could therefore not be a bona fide occupant.

Counsel further argued that the Court of Appeal erred in finding fraud on the mistaken assumption that land under ***bona fide*** occupant could not be leased to another person because the ***bona fide*** occupant only held a privilege to apply for a lease and the proprietor could only be given priority to such an applicant.

With regard to the third criticism relating to fraud, learned counsel for the appellant submitted that the appellant could not commit fraud against the 2nd Respondent who had no interest in the suit land since the statutory leases had been extinguished and therefore by the time the appellant was registered the suit property had vested in the interim District Land Board whose functions were to be performed by the 2nd Respondent until

the enactment of the Land Act in accordance with Section 2 of the Constitution (Consequential Provision) Act, Cap.1. Finally on this ground, counsel contended that the 2nd Respondent did not object when the appellant applied for renewal of the lease in 2004, and therefore the Court of Appeal erred in not addressing itself to this fact.

In reply, learned counsel for the respondent submitted that the agreed facts spoke for themselves. Mukwano Enterprises Ltd denied selling the land to the appellant and the appellant had not challenged the denial. He argued that it was upon the admitted facts that the trial Court found that Plots 32-40 were obtained by the appellant through fraud.

He contended that the Court of Appeal adequately re-evaluated all the evidence on record including the evidence of fraud. He pointed out that the whole of the appellant's appeal did not touch on the admitted transactions in agreed facts which constituted fraud. Learned counsel submitted further that the expiry of the 1st respondent's lease on 9.11.2002 did not exonerate the appellant of its fraud committed on 26.11.1995, nor does the expiry exonerate the appellant from the wrongful eviction of the 1st respondent and destruction of his property on 25.11.1995.

Regarding the lease for 10 years obtained by the appellant from the District Land Board, learned counsel for the respondents submitted that the lease was neither the subject of the trial in the High Court nor in the Court of Appeal, and it does not feature in the record of appeal.

It was counsel's contention that the lease was obtained with the intention of defeating the respondent's unregistered interest. He pointed out that while the plaintiffs closed their cases on 21.10.2002, the appellant did not start its defence until 9.5.2006 having kept the proceedings stalled on the pretext of negotiating a settlement which never materialized. It was counsel's submission that the appellant was simply playing with time to get a new registration to defeat the respondent's interest.

It is surprising that counsel for the appellant has spent so much time arguing on periphery issues of law which have no connection with the complaint in the ground of appeal that the Court of Appeal erred in law when they held that the appellant had obtained the suit

property fraudulently without re-evaluating evidence as the fist appellate Court. The core complaint in this ground is the finding of fraud. The issue of fraud was decided on the basis of evidence agreed upon at the trial and the oral and documentary evidence adduced by the parties. Learned counsel for the appellant has not challenged this evidence which was relied on by the trial Court and by the Court of Appeal.

In the High Court, this is how the trial judge addressed the issue of fraud:

> ***"I have already found that there was nothing to make the land office personnel in Mbarara or the headquarters volunteer to initiate the process of incorporating plots 32-40 into the title now held by Horizon Coaches Ltd. Charles Muhangi the Managing Director thereof knew that there was a landlord claiming the land. He demanded rent from a tenant whose building Horizon Coaches Ltd found on the land and never claimed to have erected. ……. The correspondence on record especially Exhibit P.5 shows that the two areas were envisaged, one for UTC, and the other for other transport vehicle operations. I am therefore of the view that Mbarara Municipal Council reserved Plots 32-40 Mbaguta Road and on the same in 1982 gave a lease to Edward Rurangaranga while the rest of the plots that is 24-30 were leased to UTC, the area sold to Mukwano Enterprises and subsequently to Horizon Coaches Ltd instead of sticking to what had been bargained for the company through its officials decided to commit the fraud in the question. The title held by Horizon Coaches Ltd. shall thereof be cancelled so that it retains plots 24-30 Mbaguta Road only. The rest of plots that is 32-40 should revert to Mbarara Municipal Council. Since the fraud was perpetrated by the company itself, Horizon Coaches Ltd., it cannot benefit from the doctrine of bona fide purchaser for value without notice…."***

In agreeing with the above findings and orders, Bahigeine J.A. who wrote the lead judgment in the Court of Appeal justified the findings on fraud and emphasized the protection accorded to a tenant in occupation as follows:

> ***"It is indisputable that the 1st respondent had been on the suit property since 1982 and had utilized it. The appellant cannot feign ignorance of this in view of the fact that it was demanding rent from him. It is trite that the procurement of registration of title in order to defeat an unregistered interest amounts to fraud. As the learned judge correctly observed, it is never the duty of the Land Registry officials to unilaterally initiate and alter the Register without following the established procedures.***
>
> ***While it is correct that Article 285 of the 1995 Constitution abolished statutory leases to urban authorities, provisions were made to protect the rights of tenants in occupation of registered land. District Land Boards established by the Land Act succeeded the controlling or urban authorities. Subsequent to the extinguishing of statutory leases, the rights of the respondent as a tenant in possession for a long time with developments thereof could not be automatically extinguished, rather he is deemed to be a bona fide occupant of the registered owner. Therefore the suit property could not be forcefully taken over by the Land Registry officials and allocated to somebody outside the law. The entire transaction was tainted with fraud and could not by any means be allowed to stand. The learned judge was thus correct to return the land to the respondent. See Kampala District Land Board and Another Vs. National Housing and Construction Corporation (2005) 2 EA 69."***

On fraud, Byamugisha, JA observed:

> ***"The appellant was neither a purchaser nor an allocatee of the piece of land that was illegally included in its certificate of title by the Registrar***

of Land Registration. The inclusion could not have been done without his active participation of the appellant through its Managing Director. There was sufficient evidence to prove fraud on the part of the appellant.

Accordingly, I uphold the findings of the learned judge on this point."

I entirely agree with the concurrent findings of the two lower Courts that the appellant obtained registration of the suit land by fraud. The appellant claimed that Mukwano Enterprises sold and transferred to it the suit land. However, Mukwano Enterprise denied this. There was sufficient evidence accepted by the lower Courts that the registration of the disputed plots in the name of the appellant was done under the guise of rectification of the register after 40 years of the existence of the plots in question under a different occupant. The two Courts below found that the registration was carried out by the officials of the Land Office in Mbarara and the Registration of Titles office in Kampala in connivance with the appellant to deprive the respondent of his interest in the suit land over which he had a subsisting lease. The appellant knew of the existence of the respondents lease which was adjoining its plots and went ahead to register the suit land in its name without informing or inquiring from the respondents about its intention to acquire the land. It was after it had registered the suit land that it embarked on demanding rent from the respondent. This was a classical case of a person obtaining registration to deprive another of his unregistered interest in land through registration. It is well settled that this amounts to fraud.

It is irrelevant in my view whether the 1st Respondent was a ***bonafide*** occupant or a lawful occupant of the suit land. The point is that he had a subsisting lease which had not expired and was therefore a tenant by occupancy protected by Article 237(8) of the Constitution and Section 31 of the Land Act Cap 227.

I find no merit in ground 2 which should fail.

Grounds 3 and 4: The Remedies:

In these two grounds, the appellant complains that the Court of Appeal erred to confirm the remedies granted to the respondents by the trial court.

Regarding the order for cancellation of the title held by the appellant on the suit land, learned counsel for the appellant assigned that the disputed land could not be returned to the 2nd respondent as owner because it had leased to own a Statutory lease by operation of the Constitution. It was his contention that the only body which could lawfully claim the suit land is the successor to the 2nd Respondent namely, Mbarara District Land Board which lawfully granted the lease to the appellant in 2004.

With regard to the order that the rest of plots 32 – 40 Mbagula Road revert to the 1st Respondent, learned counsel for the appellant submitted that the suit land could not be returned to the 1st Respondent because his unregistered leased could not in law be capable of being protected by law. Regarding the order that the 1st Respondents lease still subsists, learned counsel for the appellant submitted that the lease had expired and had not been renewed.

On the orders for payment of damages, learned counsel argued that the appellant was entitled to re-enter the disputed property for non-payment of rent by the 1st Respondent and therefore the 1st Respondent could not complain of embarrassment. Therefore, in counsels view, the award of Shs.10,000,000/- as general damages was illegal.

As regards the award of Shs.10,000,000/- for value of the building and stock in trade, learned counsel submitted that no valuer was produced to prove the value of the building or merchandise. He contended that the value of the building was guess work and the merchandise belonged to 13 different tenants, not the 1st Respondent. Therefore their value was not strictly proved.

On the award of Shs.50,000,000/= to the 1st Respondent as mesne profits, counsel submitted that this was erroneous in law because there was no evidence that the respondent actually received those profits.

Regarding the order that the 1st and 2nd and 3rd appellants pay to the 2nd Respondent Shs.25,000,000/= as mesne profits was illegal as the 2nd Respondent had no property which could be wrongfully possessed.

With regard to the order that the appellant pays costs to the 4th defendant (Mukwano Enterprises Ltd) learned counsel for the appellant submitted that it was the 1st Respondent who applied to join Mukwano Enterprises Ltd as a defendant, and therefore the trial court erred in not ordering the 1st Respondent to pay costs to it as it is him who dragged the latter to Court.

In reply learned counsel for the respondents submitted that the property was not returned to the 2nd Respondent as Statutory Lessee but as owner since 1954 with developed infrastructure and that Mbarara District Land Board was not owner but controlling authority which could give the 2nd Respondent 1st priority if ever it was to offer a lease over the land. He pointed out that the fresh lease to the appellant in 2004 was not the subject of these proceedings. He argued that the 1st Respondent's unregistered lease still subsisted because neither Mukwano Enterprises nor Mbarara Municipal Council sold the suit land to the appellant but the merely obtained its registration by fraud.

Learned counsel contended that the appellant had obtained land by fraud and had no right of re-entry and therefore the award of Shs10,000,000/= was legal. He further submitted that the record showed that the premises were for business purposes and the appellant did not deny the destruction of the property, and therefore the award of damages was justified. Learned counsel supported the remaining awards as legal and justified.

I have carefully considered the submissions of both counsel in respect of the orders made by the trial Judge and confirmed by the Court of Appeal. I am in general agreement with counsel for the respondent that orders were justified. I would confirm the orders.

Accordingly I find no merit in these two grounds, which should fail.

Decision:

In the result I find no merit in this appeal and would dismiss it with costs in this Court and Courts below.

As the other members of the Court also agree, this appeal is dismissed with costs here and the Courts below.

Dated at Kampala this **27th** day of **January** 2011.

B J Odoki
CHIEF JUSTICE

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: ODOKI CJ., KATUREEBE, OKELLO, TUMWESIGYE AND KISAAKYE, JJ.SC)

CIVIL APPEAL NO 14 OF 2009

BETWEEN

HORIZON COACHES LTD} :::::::::::::::::::::::::::::: APPELLANT

AND

1. **EDWARD RURANGARANGA }**
2. **MBARARA MUNICIPAL COUNCIL}:::::::::: RESPONDENTS.**

[Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Kitumba and Byamugisha JJA) dated 11 August 2008 in Civil Appeal No 34 of 2007]

JUDGMENT OF KATUREEBE, JSC.

I have had the benefit of reading in draft the judgment of my Lord The Chief Justice, and I fully concur that this appeal has no merit and should fail. I also concur in the order as to costs.

Delivered at Kampala this **27th** day of **January**, 2010.

……

Bart M. Katureebe

Justice of the Supreme Court

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: ODOKI CJ., KATUREEBE, OKELLO, TUMWESIGYE AND KISAAKYE, JJ.SC)

CIVIL APPEAL NO 14 OF 2009

BETWEEN

HORIZON COACHES LTD} :::::::::::::::::::::::::::::: APPELLANT

AND

1. **EDWARD RURANGARANGA }**
2. **MBARARA MUNICIPAL COUNCIL} :::::: RESPONDENTS.**

[Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Kitumba and Byamugisha JJA) dated 11 August 2008 in Civil Appeal No 34 of 2007]

Judgment of Okello, JSC:

I have had the opportunity to read in draft the judgment prepared by my learned brother, Odoki, CJ, and I agree with him that the appeal lacks merit and must fail.

I also concur with the orders he proposed.

Dated at Kampala this 27th day of January, 2011

G.M. OKELLO

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

CIVIL APPEAL NO 14 OF 2009

BETWEEN

HORIZON COACHES LTD} :::::::::::::::::::::::::::::: APPELLANT

AND

1. **EDWARD RURANGARANGA }**
2. **MBARARA MUNICIPAL COUNCIL}:::::::::::: RESPONDENTS**

[Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Kitumba and Byamugisha JJA) dated 11 August 2008 in Civil Appeal No 34 of 2007]

JUDGMENT OF TUMWESIGYEE, JSC

I have had the benefit of reading the draft judgment of my Lord Chief Justice Odoki and I agree that this appeal should be dismissed. I also agree in the orders he has proposed.

Dated at Kampala this **27th** day of **January** 2011

JOTHAM TUMWESIGYE

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: ODOKI C.J., KATUREEBE, OKELLO, TUMWESIGYE AND KISAAKYE, JJ.SC)

CIVIL APPEAL NO 14 OF 2009

BETWEEN

HORIZON COACHES LTD} :::::::::::::::::::::::::::::: APPELLANT

AND

1. **EDWARD RURANGARANGA }**
2. **MBARARA MUNICIPAL COUNCIL} :::::: RESPONDENT**

[Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Kitumba and Byamugisha JJA) dated 11 August 2008 in Civil Appeal No 34 of 2007]

JUDGMENT OF DR. E. M. KISAAKYE, JSC

I have had the privilege to read in draft the judgment of my Lord learned Chief Justice Odoki, CJ.

I agree with him that the appeal lacks merit and that it should be dismissed with costs to the Respondent in this Court and the Courts below.

Dated at Kampala this **27th** day of **January**, 2011.

…….

DR. ESTHER M. KISAAKYE

JUSTICE OF THE SUPREME COURT