

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FIRST REGISTERED IN NAKAWA COURT AS CIVIL APPEAL NO. 60 OF 2014

LATER REGISTERED IN CIVIL DIVISION AS CIVIL APPEAL NO. 155 OF 2016.

VISION IMPEX LIMITEDAPPELLANT — 5

VERSUS

GURUSHAN SINGH GHATORE.....RESPONDENT

JUDGMENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

1. This judgment is in Civil Appeal No. 155 of 2016 (in the Civil Division). The Appellant framed 6 grounds of appeal. These are: — 10
- i. The learned trial magistrate erred in law and fact when she held that the Appellant restricted the easement and/or common property.
 - ii. The learned trial magistrate erred in law and fact in holding that the Appellant infringed the Respondent's right to quiet enjoyment. — 15
 - iii. The learned trial magistrate erred in law and fact in issuing a permanent injunction restraining the Appellant from imposing a restriction on common property.
 - iv. The learned trial magistrate erred in law and fact in issuing a permanent injunction restraining the Appellant from breaching the memorandum of understanding. — 20
 - v. The learned trial magistrate erred in law and in fact when she denied the Appellant general damages and costs under its counterclaim.

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vi. The learned trial magistrate erred in law and fact when she ordered that the Appellant pays general damages of Ug.shs 3,000,000/- (Uganda shillings three million) to the Respondent.

2. The Appellant was represented by Mr. Raymond Ndyagambaki of M/s. Verma Jivram & Associates & the Respondent was represented by Mr. Innocent Tugumisirize. — 5

3. The Respondent filed civil suit No. 113 of 2012 in the Chief Magistrates court of Nakawa against the Appellant for a declaration that the restriction on the easement and/or common property he'd implemented was an infringement on the right of quiet enjoyment; an order ejecting the sign post planted on the easement; a permanent injunction restraining the Appellant from imposing restrictions on common property and/or easement; a permanent injunction restraining the Appellant from breaching the memorandum of understanding and costs of the suit. — 10

4. It was the Respondent's case that by a sale agreement dated 23rd January 2006, the Respondent bought land comprised in LRV 3412 folio 8 plot 28 Lugogo channel from the Appellant. He developed the land with a residential house which he was occupying. The Appellant owned land comprised in LRV 3412 folio 13 plot 50C Lugogo bypass adjacent to the Respondent's land. The Appellant's land served as an easement and common property to give support to all units/plots including the Respondent's land. — 15

5. By memorandum of understanding (herein after MOU) dated 23rd January 2006, the Appellant permitted the Respondent to use the land as an easement to access his land on condition that the Respondent contributes to the maintenance of the said easement, which the Respondent did. The Respondent used the easement to host his water meter but the Appellant in breach of the MOU ordered him to remove it and/or relocate it somewhere else. — 20

6. In further breach of the MOU, the Appellant erected sign posts reading "... this parking is for visitors only. For maximum, the owner reserves right of admission

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Vision Impex Ltd" limiting the time which the Respondent and his visitors spent in the parking which allegedly constituted an easement.

7. In its written statement of defence, the Appellant denied the Respondent's claim and contended that the Respondent's right in the easement is only a right of access. The restrictions to the Respondent's use of its land were a legal exercise of its rights as land owner. The Appellant also filed a counterclaim alleging breach of the the MOU by the Respondent's failure to make payments towards the maintenance of the developments on the premises. Further that the Respondent had encroached on the Appellant's land by parking his vehicles on its land. - 5
8. In the reply, the Respondent contended that the breach of contract under the counterclaim were merely created non-existent stories as a means of supporting the sham defence to the suit and that hosting the water metre was within the Respondent's right to use the land as an easement. - 10
9. In her judgment of 19th May 2014, Her worship Mugala Jane found that the Appellant breached the MOU when it denied the Respondent the right to park his vehicles on plot 50C. She ordered the Appellant to eject the sign post erected on the suit plot; issued a permanent injunction restricting the Appellant from imposing restrictions on the common property and easement, issued a permanent injunction restraining the Appellant from any further acts of breach of the MOU, awarded the Respondent general damages of Ug. Shs. 3,000,000/= and costs. The Appellant was dissatisfied with this decision hence this appeal. - 15 - 20

Analysis

10. I have carefully looked at the trial record, pleadings and submissions in this appeal. The Supreme Court in **Father Nanensio Begumisa and 3 Ors v. Eric Tiberaga** SCCA No. 17 of 2004 observed that the legal obligation of the first appellate court is to re - appraise evidence and is founded in common law, rather than rules of procedure. On a first appeal, the parties are entitled to obtain from the Appeal Court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence, the Appeal Court has to make due allowance for the fact that it has never seen or heard the witnesses, it must weigh the conflicting evidence and draw its own - 25 - 30



inference and conclusions. (Also see **F.K. Zabwe v. Orient bank and others SCCA No. 4 of 2006.**) I will adopt this standard in my assessment.

11. I had the opportunity to look at the MOU (tendered as annexure B) between the parties in respect to the suit land. Under clause (ii) the Appellant conditionally permitted the Respondent to use the suit premises as an easement to access his land. Nowhere in the MOU does the Appellant as the owner of the suit land permit the Respondent to use the suit land for parking or anything else. — 5

12. By putting up the sign post, the Appellant was only managing the suit property in respect to visitors to the same and not in any way restricting the Respondent. He was only managing the suit property as the land owner. — 10

13. It is not demonstrated that this affected the Respondent's enjoyment to access his land. The trial magistrate therefore erred in law and fact when she held that the Appellant restricted the easement or common property or that the Appellant infringed on the Respondent's right to quiet enjoyment. By refusing to contribute to the maintenance of suit premises the Respondent violated clause 1 (i), (ii), (v), (vi) of the MOU. — 15

14. The trial magistrate also erred in law and fact by issuing a permanent injunction restraining the Appellant from imposing restrictions on the suit property. There was a breach of the MOU by the Respondent. It was therefore not necessary to restrain the Appellant from accessing the same. — 20

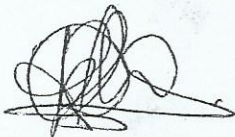
15. The trial magistrate also erred in law and fact by granting the Respondent general damages of Ug. Shs 3,000,000/= and denying the counter claim. Since the Respondent was in breach of clause 1 (i), (ii), (v), (vi), the counter claim filed in the trial court succeeds and the Appellant is entitled to general damages for the same.

16. Based on all the above the six grounds of this appeal are resolved in the affirmative. Even the counter claim filed in the trial court succeeds as filed. The trial court's judgements and orders are set aside. — 25

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17. The Appellant is awarded general damages of Ug. Shs. 30,000,000 (Thirty Million).
The Appellant is also awarded costs of this appeal and in the lower court. Interest on general damages is awarded at court rate at 10% per annum from the date of judgment till payment in full.

I so order.

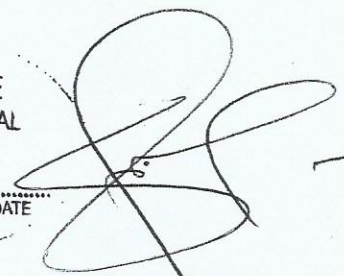


LYDIA MUGAMBE
JUDGE
10/05/2019.

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