

OMULERU MOSES :::::::::::::::::::::::::::::::::::::: PLAINTIFF  
VS  
OKOBOI ALBERT :::::::::::::::::::::::::::::::::::::: DEFENDANT

## ***JUDGMENT***

**Decisions by: H/W KYEMBE KARIM**

2024, the defendant's Advocates wrote to court asking to withdraw the written statement of defence on grounds that they had lost contact with their client.

On the 18<sup>th</sup> February, 2025 when the matter came up for scheduling, the defendant told court that he had just become aware of the suit, prompting court to grant him leave, without objection of the plaintiff's counsel to file a fresh written statement of defence as a self-represented litigant and he duly complied and filed the same on the 6<sup>th</sup> March, 2025.

It appears to me that M/S MUKHANA & CO. ADVOCATES have dealt with the defendant on previous occasions and out of vigilance and prudence for their client, they filed a WSD on the 25<sup>th</sup> July, 2024 through their firm in anticipation of full instructions but they later withdrew when the full instructions were not forthcoming.

Under **O. 6 r. 18 of the CPR**, this Court is empowered and enjoined to strike out any matter or pleading that is deemed scandalous, amongst other provisions.

For that reason, court grants the learned Advocates request in their aforesaid letter. Accordingly, I hereby strike out the written statement of defence filed on 25<sup>th</sup> July, 2024 together with the counter claim contained therein. Court shall rely on the WSD filed on the 6<sup>th</sup> March, 2025.

**Plaintiff's case:**

It's the plaintiff's case that him and the defendant own two distinct pieces of land neighboring each other and both developed with commercial buildings leaving between themselves a corridor for common easement and public use. That around the year 2021, in the course of roofing the structure on his land, the defendant annexed his commercial building to the wall of the plaintiff's building, thereby, altogether blocking the corridor hitherto reserved for common easement and public use which raised tensions between the two parties, culminating into the defendant herein filing ***civil suit no. 021 of 2022- Okoboi Albert -Vs- Omuleru Moses*** which was subsequently withdrawn by consent of the parties with orders that Okoboi Albert pays UGX. 1,500,000/= to Omuleru Moses as costs of the said suit, which has never been paid, to-date, hence this suit.

#### **Defendant's case:**

The defendant filed a written statement of defence disputing the allegations in the plaint and asserted that the corridor purportedly reserved for common easement and public use actually forms part of the defendant's land and that he had only left it undeveloped for future utilization and not for the plaintiff or the public to use as an easement.

#### **Evidence adduced:**

The plaintiff called 2 witnesses while the defendant testified as his own witness.

Pw1 gave a back ground of how they have been neighbours with the defendant and how he spent about 1 year without progressing with his construction, in the course of which, he received a telephone call from a one, Ojobi Simon informing him that the defendant had constructed a

room whose wall was annexing to the plaintiff's wall, thereby closing off the corridor that had earlier existed between the two neighbors.

Pw2- Arikosi John Francis who is also a neighbor told court that the defendant first constructed his structure and left space for the corridor and when the plaintiff also started constructing his structure, the defendant, now extended and also constructed on the space hitherto preserved between the two parties, hence complaints to the local council authorities but the defendant remained adamant.

When it came to hearing the defence case, he testified as his own witness and his testimony was taken down as Dw1. He immediately expressed desire to reconcile with the plaintiff and told court that he had come with the clan head prepared to make right anything that may have gone wrong. He even knelt down in court and asked for forgiveness from court and from the plaintiff and also asking not to be condemned to costs yet he even haven't paid up the ones of the previous suit. He also said he had already demolished the part that was causing this havoc.

**Issues:**

1. Whether there was any nuisance committed by the defendant?
2. What remedies?

**Resolution:**

***Issue 1: Whether there was any nuisance committed by the defendant?***

**Evidence & burden of proof:**

**Section 101 of the Evidence Act, cap 8** is to the effect that *“he who alleges must prove.”*

**Section 58 of the Evidence Act, cap 6** provides that a fact in issue can be proved by direct oral testimony, save for the contents of a document.

In ***Haji Asuman Mutekanga –Vs- Equator Growers (U) Ltd, S.C. Civil Appeal No.7 of 1995***, it was stated that it is trite law that strict proof does not necessarily always require documentary evidence. Oral testimony is good evidence to prove a fact in issue.

**Section 57 of the Evidence Act**, cap 8 Laws of Uganda, 2023 revised edition provides that facts admitted need not be proved.

Upon closure of Dw1’s testimony, learned counsel for the plaintiff prayed that judgment on admissions be entered against the defendant.

According to **Section 2** of the Evidence Act Cap 8

*“**evidence**” denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes testimonies by accused persons, **admissions**, judicial notice, presumptions of law and ocular observation by the court in its judicial capacity. [Bolding added for emphasis].*

Under **Section 28** of *The Evidence Act*, cap 8, Laws of Uganda, 2023 revised edition admissions are not conclusive proof but they create an *estoppel* against the party admitting the same.

**Order 13 Rule 6 CPR** provides:

*Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just.*

In **Exim Bank(U)Ltd –VS- Westwinds trading Co. Matco Ltd 2025 and Yokana Bunkedeko –VS Commissioner Land Registration HCMA 1453 of 2024, HON. JUSTICE AISHA NALUZZE BATALA** held that admissions have to be unequivocal and not capable of having multiple interpretations.

In the instant case, I note that the defendant's testimony as Dw1 was mainly apologetic utterances towards both court towards the plaintiff. I am reluctant to infer that the conduct was in law, an admission of facts.

That being the case, I did not see any evidence controverting the plaintiff's evidence or entrenching his (defendant's) pleadings to the effect that the contested portion of land forms part of his land.

In **Kabale District Local Government Council vs Musinguzi (2006) 2 EA at 131** it was stated that a party presenting unchallenged evidence has no duty to prove it further. Same reasoning was adopted in **Uganda Commercial bank ltd vs Yakub (2013) UGCOMMC 153.**

Having failed to controvert the plaintiff's evidence the defendant is presumed to have admitted the same. That presumption of law is one for purposes of making logical conclusions and is rebuttable.

The threshold of “**unequivocalness**” requirement as required under the principle of “**judgment on admissions**” is slightly higher than in the rebuttable presumptions of law.

While I find that the defendant’s testimony did not amount to an admission for purposes of judgment on admissions, it is my finding that his failure to controvert or rebut the plaintiff’s testimony lives him technically deemed as having admitted the same. Accordingly, the plaintiff stands duly discharged under **Section 28 and 57 of The Evidence Act cap 8, Laws of Uganda, 2024 revised edition** from adducing any further proof thereof.

In conclusion therefore, I find that the plaintiff has proven his case against the defendant on a balance of probabilities and Issue 1 is answered in the affirmative.

In conclusion, the plaintiff’s suit succeeds in the following terms.

1. A declaration doth issue that the defendant’s building is a nuisance to the plaintiff’s usage of his property.
2. Illegality of the defendant’s building was not proven to court and no declarations are issued in that respect.
3. A declaration doth that the corridor/passage between the plaintiff’s and defendant’s properties is an easement for better enjoyment of both properties.
4. As the plaintiff orally expressed to court his desire to dispense with his claim for general, punitive and aggravated damages together with interest on decretal sum damages, none is granted.

5. The defendant is hereby ordered to remove all and any remaining part of the wall he had erected together with all residual debris within 15 days from the date hereof.
6. As regards the alleged unpaid legal costs of 1,500,000/= arising from a previously instituted suit, the same can be realized through steps originating from that **civil suit no. 021 of 2022- Okoboi Albert – Vs- Omuleru Moses**. I hope by the time of delivering this judgment those costs have been paid.
7. Each party shall bear own costs of this suit in a bid to maintain harmony between the two neighbors.

I so order.

Dated at PALLISA this ...07th..... day of .....JULY.....2025

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**HIS WORSHIP KYEMBE KARIM**

LEARNED MAGISTRATE GRADE 1