

UGANDA / JUDGMENT

Baguma v Muhwezi (Civil Appeal 26 of 2022) [2024] UGHC 1166 (25 October 2024)

[2024] UGHC 1166

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Civil Appeal 26 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT HOIMA CIVIL APPEAL NO. 26 OF 2022 (Formerly MSD Civil Appeal No. 43 of 2020)

(Arising from Civil Suit No. 99 of 2015 of the Chief Magistrate's Court *of Hoima at Hoima)*

BAGUMA GEORGE :::::::::::::::::::: ANDMUHWEZI ASTONE :::::::::::::::::::: [Appeal from the judgment and orders of the Chief Magistrate of Hoima in C. S No. 99 of 2015 delivered on the 13th day of October 2020]**BEFORE: HON. BYARUHANGA JESSE RUGYEMA**

JUDGMENT

Introduction

- [1] This appeal emanates from the judgment delivered by the Chief Magistrate's Court of Hoima on October 13, 2020, presided over by H/W **Kagoda Samuel**, Chief Magistrate, where the court decided in favour of the Respondent, Muhwezi Astone. The Appellant, Baguma George, challenged this decision in this Court. The core of the dispute is centered on allegations that the Respondent's cattle destroyed the Appellant's crops on land located at Kyarushesha-Kyangwali, Hoima District. In contrast, the Respondent denied liability, asserting that the Appellant had no legitimate claim to the land in question and had unlawfully seized his cattle. The Respondent counterclaimed for damages due to the alleged wrongful impounding of his cattle by the Appellant. The Chief Magistrate's Court found that the Appellant had failed to substantiate his claim of crop destruction and had therefore illegally impounded the Respondent's cattle. The court upheld the Respondent's counterclaim, awarding damages for the loss of 17 heads of cattle and 3 calves.

Facts of the Appeal

- The Appellant/plaintiff in the lower court claimed against the [2] Respondent for damages arising out of the Respondent's cattle destroying his crops on land described in LRV 3213 Folio 16 Plot 9 Block 3 at Kyarushesha Kyangwali in Hoima District.
- [3] It was the Appellant's case that on the 21st September 2015 at around 2:00pm, the herdsmen of the Respondent failed to restrain and or allowed 22 heads of cattle belonging to the Respondent invade the Appellant's land where they destroyed the fence of the land and crops which included beans, bananas and cassava thereon. That as a result, the Appellant impounded the cattle awaiting an amicable settlement of the matter.
- [4] The Respondent denied liability, asserting that the Appellant had no ownership rights to the land in question, that it belonged to a one Kamuhanda George and that it is adjacent to or neighboured that of the Respondent where he grazes his cattle. That the Appellant found the Respondent's cattle grazing near the common boundary of his land with that of **Kamuhanda George** and seized **39 heads of cattle** alleging that the said cattle had destroyed his gardens. That otherwise, no gardens of the Appellant were destroyed save for the Appellant's objective of stealing the Respondent's cattle. It was until the 8th of October, 2015, that with intervention of police and other relevant authorities that the Appellant handed over only 22 heads of cattle out of the 39 heads of cattle that he impounded. He asserted that the Appellant had wrongfully impounded the Respondent's cattle. The Appellant sought special and general damages, a permanent injunction. and costs.
- The Respondent counterclaimed for damages, contending that the [5] Appellant had wrongfully impounded his 39 heads of cattle and sought compensation for the loss of the missing 7 heads of cattle upon return of the 22 heads of cattle.

The Chief Magistrate's Court found in favour of the Respondent, [6] concluding that the Appellant had failed to prove his claim of damage and that therefore, he had illegally impounded the to his crops Respondent's cattle. The Respondent's counterclaim was upheld, and damages were awarded. Dissatisfied with the decision of the lower court, the Appellant lodged an appeal to this court on six grounds.

Grounds of Appeal

- 1. The learned trial magistrate erred in law and fact by finding that the Appellant had failed to prove that any of his crops were destroyed.
- 2. The learned trial magistrate erred in law and fact by concluding that the Appellant had illegally and wrongfully impounded the Respondent's cattle.
- 3. The learned trial magistrate erred in law and fact by finding that the Respondent had proved his counterclaim.

- 4. The learned trial magistrate erred in law and fact by awarding the Respondent Shs \$2,100,000/= for 3 calves and Shs \$17,000,000/= for the heads of cattle allegedly lost.
- 5. The learned trial magistrate erred in law and fact by awarding interest on the damages from the date of filing the suit until payment in full.
- 6. The learned trial magistrate erred in law and fact by failing to properly evaluate the evidence, leading to a wrong conclusion.

Duty of the ^{1st} Appellate Court

This being a first Appellate court, it is trite that 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. This calls for fresh and exhaustive scrutiny of the evidence and law as presented in the lower court, Fr. Narsensio Begumisa & Ors Vs Eric Tibebaga, SCCA No.17 of 2002 [2004] UGSC 18.

Evaluation of Evidence and Analysis

Ground 1. Proof of Crop Destruction

- [8] The Appellant argued that the trial magistrate erred in finding that he failed to prove crop destruction. The Appellant presented two witnesses, Kagenyi Livingstone (PW1) and Kiiza Edward (PW2), who testified to the destruction of crops by the Respondent's cattle. However, there are notable weaknesses in this evidence, PW1 and PW2 provided conflicting accounts of how the fence was damaged. PW1 alleged that the Respondent's herdsmen cut the fence, while PW2 claimed the cattle broke the fence. It is however apparent that none of these two witnesses witnessed the incident regarding when the cattle in question allegedly broke into the Appellant's fenced farm so as to be able to precisely testify as to whether the fence was cut by the herds men or the cattle themselves broke and destroyed it.
- [9] It is apparent that the Appellant's case for damages regarding his crops was based and supported by an agricultural officer's assessment of the damage to the crops by the animals. The Agricultural officer was not called to testify and the Agricultural officer's report was neither pleaded nor admitted in evidence to prove and justify the Appellant's claim of special damages of \$Ugx\$ 11,150,000/=. Special damages must be strictly proved meaning that evidence adduced on their proof must show particularity in accordance with the pleadings, and the claim must also be based upon precise calculation as to enable the defendant access facts, Nasif Mujib & Anor Vs A. G, HCCS No.160 of 2014. The Appellant failed on this aspect. This omission, as rightly observed by the trial court, raises doubts about the authenticity and accuracy of the damage assessment.

- [10] The trial court therefore correctly found that the appellant failed to prove that the Respondent's cattle destroyed his crops on the alleged land irrespective of whether the land belonged to him or belonged to Kamuhanda George or any other person since the dispute before court was not about land. In my view, it is known that a person can own crops on another person's land. The other evidence provided by the Appellant

of the destruction of his crops were photos, P. Exh.2. Whereas the Appellant claimed that the animals were found destroying his crops none of the photos depict cattle destroying the crops or being in the garden. None of the crops allegedly destroyed and the fence allegedly broken were depicted in P. Exh.2. According to the L. C1 Chairman (PW2), the destroyed crops were beans and maize which had reached flowering stages, cassava that was ready for harvesting and then the 2 acres of banana plantation that were mature and young ones. None of these were depicted by P. Exh.2. The trial magistrate's finding that the Appellant failed to prove the destruction of crops is supported by these omissions and the absence of corroborative evidence. The trial magistrate's finding that the Appellant did not satisfactorily prove crop destruction is therefore in the premises found supported by the evidence and is not erroneous. This ground of appeal accordingly fails.

Ground 2. Illegal Impounding of Cattle

- [11] On wrongful impounding of cattle, the Respondent's evidence, which includes testimonies from Astone Muhwezi (DW1), Tibananuka Charles (DW2), and Nakiiza Shantale (DW4) consistently supported the claim that the Appellant wrongfully impounded the Respondent's cattle. The Respondent's witnesses provided coherent accounts that the Appellant impounded the cattle from the Respondent's land and that the Appellant did not own or have gardens near the Respondent's land. The Appellant whose evidence is to the effect that he seized the cattle from the Respondent's garden is not corroborated by any other evidence. The L. C 1 Chairman (PW2) appeared dishonest when in his evidence he claimed that he found the cattle in the Appellant's gardens destroying his crops, a fact dismissed by the photos (P. Exh.2) which were purportedly taken covering the cattle destroying the crops.
- [12] I find and uphold the trial Court's findings of this issue that the Respondent's evidence, including testimonies from Astone Muhwezi (DW1), Tibananuka Charles (DW2), and Nakiiza Shantale (DW4) established that the Appellant had impounded the Respondent's cattle unlawfully since in this case, there is no evidence of any destruction of crops on the Appellant's land. The Appellant's argument claiming that the impounded cattle had destroyed his crops was rebutted by the

Respondent's evidence. Witnesses for the Respondent testified that the cattle were impounded from the Respondent's land. The evidence provided by the Respondent was consistent and unchallenged by the Appellant. The trial magistrate's finding that the Appellant wrongfully impounded the Respondent's cattle is well-supported by the evidence. This ground of appeal therefore accordingly fails.

Grounds 3 & 4: Proof of the Counterclaim and Damages Awarded

The Appellant contested the trial magistrate's awards of Shs \$2,100,000/\$ = for calves and Shs 17,000,000/= for the cattle. The assessment of damages is a matter of discretion for the trial court, and the court is required to ensure that damages are commensurate with the loss suffered, Wangala Phillip Vs Steel and Tube Industries Ltd, HCCS No.2022 OF 2018.

- \$[13]\$ In his witness statement, paragraphs 13-20, the Respondent testified thus;
- "13. That one day while I was away, the plaintiff [Appellant] entered my land and drove away some of my cattle which was grazing on my land and took it to the land of Kamuhanda George and put it in his kraal.
- 16. That thereafter, counted my herd of cattle and found when *39 heads of cattle missing....*
- 19. That out of the 39 heads of cattle which the plaintiff took away from the farm six were breastfeeding and the calves were left at my home and by the time the plaintiff handed over the 22 heads of cattle to me three of the calves had died due to starvation.
- 20. That I valued my three calves which died at Shs. 1,000,000/ \$=\$ each whereas I valued the 17 old heads of cattle which went missing at shs. \$1,100,000/=\$."

The above Respondent's evidence was corroborated by that of Charles Tibananuka (DW2), a neighbor and Nakiiza Shantale (DW4), a tenant of the Respondent on the land. The Respondent's evidence was not challenged at all during cross examination. Counsel for the Appellant concentrated the cross examination on whether the damaged crops

were on the Appellant's land or on a one George Kamuhanda's land which it was said he sold to the Appellant. The ownership of the land was not the issue before court as counsel for the Appellant wants court to consider as he put it in his submissions. The issues were:

1. Whether the defendant's cows destroyed the plaintiff's crops.
- 2. Whether the plaintiff wrongfully confiscated and took 39 heads of cattle of the defendant.
- 3. Whether the defendant lost 17 cows and three calves as a result of the plaintiff's actions.
- \$[14]\$ These were the issues as framed jointly during the scheduling conference and bound the parties during the hearing and both counsel during submissions. The law is that failure to challenge evidence on a material or essential point by cross examination then such evidence is deemed admitted as inherently credible and possibly true. URA Vs Stephen Mabosi, SCCA No.26/1995. In this case, the evidence of the Respondent on the issue of the

number of his heads of cattle impounded, the calves which died and their value, remained unchallenged in cross examination and therefore, it is deemed to have been admitted by the Appellant/counter defendant.

- [15] The Respondent's counterclaim was supported by testimonies and evidence that were not adequately refuted by the Appellant. The Respondent demonstrated that his cattle, including 17 heads of cattle and 3 calves, were respectively indeed lost and dead due to the Appellant's actions. This evidence was unchallenged by the Appellant. The Respondent's counterclaim for damages due to the unlawful impounding of cattle was substantiated by evidence of the missing 17 heads of cattle and death of 3 calves. The trial court's award of Shs 2,100,000/= for the calves and Shs \$17,000,000/\$ = for the cattle was based on the Respondent's evidence, which was not rebutted and/or challenged by the Appellant. The awarded amounts align with the principle of compensation for the actual loss suffered. I consider and find that the trial magistrate's assessment of damages was based on the Respondent's evidence, which showed a reasonable basis for the awards given. The amounts awarded were supported by evidence and

consistent with the common law principles for compensation in tort, Robert Coussens Vs A. G, SCCA No.8 of 1999.

§[16]§ The above 2 grounds of appeal are in the premises found to be devoid of any merit and they both accordingly fail.

Ground 5. Interest Awarded

- The trial magistrate awarded interest on the damages from the date of §[17]§ filing the suit until payment in full. This practice is standard in civil suits to ensure that the claimant is compensated for the time value of money. The Appellant did not present a compelling argument against the interest award. The Appellant's contention regarding the award of interest from the date of filing the suit is without merit. The award of interest is a matter within the discretion of the court. In John Obwangamoyi Vs A. G, HCCS No.388 of 1988 (unreported), it is trite that compensatory damages in form of special damages, interest accrues from the date of filing the suit until payment in full, and there was no indication in this case, that the trial magistrate acted outside the bounds of this discretion, Section 26(2) CPA. In this case, the cattle in question got missing. It is presumed that had the event of the cattle missing not occurred, they would be producing and the Respondent would also be benefiting from milk, its consumption and sale and in this case, the Respondent adduced evidence that his 3 calves died of starvation as a result of the missing lactating cows. I find that this award of interest was made in proper exercise of discretion by the trial court and find no reason to interfere with it.
- Ground 6. The learned trial Magistrate erred in law and fact when he failed to evaluate the evidence and thereby came to wrong conclusions that the counter claimant had proved his case while the Appellant had failed to prove his case.

- This ground of appeal on evaluation of evidence of proof of the counter \$[18]\$ claim is rather too general and therefore offend the provisions of 0.43 \$r.1\$ (2) CPR which require the memorandum of appeal to set forth concisely the grounds of objection to the decree appealed from. Properly framed grounds of appeal, it has been held that they should

\$8\$ | Page

specifically point out errors observed in the course of the trial, including the decision, which the Appellant believe occasioned a miscarriage of justice, *Okot & Ors Vs Lamoo*, HCCA No. 26 of 2018 and *Ranchobai Shivbhai Patel Ltd & Anor Vs Wambuga & Anor*, SCCA No.6 of 2017. This ground of appeal would in the premises be apt to be struck out.

- Nevertheless, the Appellant argued that the trial magistrate failed to \$[19]\$ properly evaluate the evidence. However, it is evident from the judgment that the trial magistrate meticulously examined the evidence presented by both parties and arrived at conclusions based on the credibility of witnesses and the consistency of their testimonies. The findings of the trial magistrate are supported by the evidence on record. The trial court rightly evaluated the evidence and arrived at correct findings.
- \$[20]\$ The Respondent's counterclaim primarily focused on the alleged unlawful impounding of his cattle by the Appellant, which resulted in the loss of 17 heads of cattle and death of 3 calves. The Respondent's evidence, as outlined below, supports the finding that the Appellant was liable for damages. The testimony of **Astone Muhwezi** (DW1) is to the effect that he was informed of the Appellant's actions by witnesses Shantale (DW4), Charles Tibananuka (DW2) and Kosiya Wadada. Although DW1 was not present at the time the cattle were impounded, the testimony of these witnesses corroborates the Respondent's claim that the Appellant wrongfully seized the cattle (pages 12-13 of the record). **Tibananuka Charles** (DW2), a neighbour of the Respondent. testified that he had never seen the Appellant's gardens near the Respondent's land and confirmed that the Appellant confiscated the cattle and took them to his home. This testimony was unchallenged by the Appellant (pages 14-15 of the record). Nakiiza Shantane (DW4) testified that she observed the Appellant driving away the Respondent's cattle from harvested sorghum gardens belonging to the Respondent, not from the Appellant's land. This supports the claim that the Appellant's actions were unauthorized and illegal (page 16 of the record).
- The Respondent proved his loss of Cattle. The Respondent provided \$[21]\$ evidence of the loss of 17 heads of cattle and death of 3 calves due to the Appellant's actions. This was corroborated by DW1 and DW2, who testified about the number of cattle and calves involved (pages 12-16 of the record). Counsel for the Appellant's reliance on **DW2** regarding the number of heads of cattle the Respondent owned is not a correct basis for ascertaining how many heads of cattle the Respondent owned. It is the Respondent who knew the number of animals he owned and therefore, since his evidence was not rebutted, I find that the trial Magistrate was justified to believe DW1 as regards the number of heads of cattle that went missing.

- \$[22]\$ The trial court was therefore correct to base on the evidence of DW1 in the assessment of the damages. On assessment of Damages, the Respondent's evidence included a claim for the value of the lost cattle and calves that died. The trial magistrate assessed the damages and awarded Shs. 17,000,000/= for the lost cattle and Shs. 2,100,000/= for the dead calves. The Appellant did not challenge the valuation or the evidence supporting the damages in the counterclaim. The trial court rightly allowed the Respondent's counter claim and the resultant reliefs. This 6th ground of appeal is devoid of any merit and therefore accordingly fails.

Conclusion

\$[23]\$ Upon careful consideration of the evidence and submissions, it is clear that the trial magistrate's findings regarding the Respondent's counterclaim were well-supported. The evidence presented by the Respondent demonstrated that the Appellant unlawfully seized the Respondent's cattle and that this action resulted in significant losses. The valuation of damages and the awards given were in line with established principles of compensation for wrongful acts. The Appellant's appeal challenging these findings lacks merit. The evidence supporting the Respondent's counterclaim was consistent and credible. and the trial magistrate correctly applied the law in awarding damages. The Appellant's grounds of appeal have not demonstrated any legal or factual errors that warrant overturning the trial court's decision. The

10 | Page

trial magistrate did not err in dismissing the Appellant's claims or in allowing the counter claim and awarding damages to the Respondent.

- \$[24]\$ Judgment on appeal is entered for the Respondent with the following orders
- The appeal is hereby dismissed. \$a)\$
- The judgment of the Chief Magistrate's Court of Hoima in Civil \$\mathbf{b}\$) Suit No. 99 of 2015 is upheld.
- The Appellant is ordered to pay costs of the appeal and the \$c)\$ original suit in the lower court.

Dated at Hoima this 25th day of October 2024.

Byaruhanga Jesse Rugyema

JUDGE

\$11\$ | Page

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Prepared on 13 October 2026 · Esheria