

UGANDA / JUDGMENT

Katungye v Reynolds Construction Co. Limited (Civil Suit 205 of 2011)

[2024] UGHCCD 120 (7 June 2024)

[2024] UGHCCD 120

COURT

HC: Civil Division (Uganda)

BEFORE

Douglas Karekona Singiza, J

CASE / FILE NUMBER

Civil Suit 205 of 2011

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO. 205 OF 2011

ALEX KATUNGYE:..... PLAINTIFF

VERSUS

REYNOLDS CONSTRUCTION CO. LTD:..... DEFENDANT

Before: *Hon. Justice Dr Douglas Karekona Singiza*

JUDGMENT

1 Introduction

Whenever a dispute concerns trespass to land, then the nature of such a conflict inevitably must be linked to the constitutionally guaranteed right to private property as a protected value. In most instances, a three-stage assessment is undertaken: an assessment of an individual's right to exclusive possession of land; an assessment of an individual's right to exercise control of his or her land; and an assessment of the options available for protecting an individual's land.

In the present case, the plaintiff alleges that the defendant's excavation of *murram* (rock powder) from his land constitutes a trespass resulting in loss and damages. He prays for general damages, special damages of UGX. 82,800,000, and costs. The defendant in turn admits to the act of trespass, but questions the extent of the excavation and the amount of the compensation it ought to pay to the plaintiff.

1.1 Representation

M/s Birungi & Co. Advocates represented the plaintiff, while *M/s Verma & Partners* represented the defendant. I appreciate the contribution of both counsels, so if I do not adopt all the arguments made and the authorities cited, it is due merely to limitations of time and space.

1.2 Background

The background to the matter is straightforward. In June 2011, the defendant's officers entered the plaintiff's *mailo* plot at Block 460, Plot 108, and excavated and carried away rock powder from his 0.52 acres of land. The officers intended to use the powder in construction works which the defendant's company was undertaking on Kampala-Masaka Road.

The plaintiff brought these alleged acts of trespass to the defendant's attention, and also reported them to the Maya Police (*vide* SD Ref. 06/21/06/2011). The defendant offered the plaintiff UGX. 500, 000 for the rock powder excavated from his grounds and promised to refill the affected portion of the land. However, the plaintiff rejected the proposals and, on 16 September 2011, filed this suit against the defendant. The plaintiff based his claims on trespass by the defendant, and sought five reliefs from this Honourable Court:

- 1) General damages.
- 2) Special damages of UGX. 82,800,000.
- 3) Interest on the general and special damages at a rate of 4% per annum from the date of judgment until receipt of payment in full.
- 4) Costs of the suit.
- 5) Any other relief which this Honourable Court may consider.

In its amended written statement of defence, explains that its officers mistakenly excavated the rock powder, the volume of which could not fill two trucks from the suit land. The defendant asserts that the area Local Council One (LC1) general secretary immediately halted the excavation. Shortly after the alleged acts of trespass, the company's public relations officer and surveyor came to the suit land and both confirmed the incident.

1.3 Issues for determination

At the scheduling conference held on 1 November 2017, the parties agreed upon three issues for determination, as paraphrased below:

- 1) Was the suit land or any portion thereof excavated by the defendant company?
- 2) What is the best way to determine the extent of the excavation of the rock powder?
- 3) What remedies are available to the parties?

Considering the parties' Joint Scheduling Memorandum, the only issues to be determined are:

- 1) *What is the best method to determine the extent of the alleged act of trespass to the plaintiff's land?*
- 2) *What remedies are available to the parties?*

1.4 The plaintiff's case

The plaintiff presented four witnesses: Mr Alex Katungye (PW1), Mr Nasser Kalule (PW2), Mr Solomon Arinaitwe (PW3), and Mr Kanyike Amos (PW4). In addition to the witnesses, the plaintiff relied on three exhibits: the Certificate of Title (P. Ex. 1), the Survey Report (P. Ex. 2), and the Assessment Report (P. Ex. 3).

Mr Alex Katungye (PW1) led evidence as to the ownership of the suit land, supported by the Certificate of Title showing possession, and recalled Mr Solomon Arinaitwe (PW3) informing him on 21 June 2011 of the excavation activities taking place on the suit land. Since he had not authorised any excavations, PW1 traveled to the suit land and ordered the defendant's officers to stop the act of trespass. They did not comply with his demands, which prompted him to block their trucks from exiting the land. PW1 then lodged a complaint at a police station, and also met the defendant to negotiate compensation for the damage – however, this failed due to the proposed terms of compensation. To determine the value of the damage, PW1 engaged a surveyor, whose findings revealed that the excavation had greatly affected his plans to construct a three-storey building on the land.

Mr Nasser Kalule (PW2), the general-secretary LC1 of Maya Bujasi, confirmed to the court that the plaintiff asked him to proceed to the suit land to stop the defendant's excavation activities. He also confirmed that the suit land belonged to the plaintiff and that the defendant's officers had failed to listen to his demands that they stop excavating the suit land.

The plaintiff also relied on the expert evidence of Mr Solomon Arinaitwe (PW3), a registered valuer of 11 years and holder of a BSc in Land Management and Valuation from the University of Dar-es-Salaam. Referring to his Survey Report (P. Ex. 2) and Assessment Report (P. Ex. 3), PW3 asserted that, upon receiving instructions from the plaintiff, he conducted a topographical survey. His findings were that, over and above the creation of stockpiles of soil, the land had suffered severe damage and depreciation as a result of the excavation and removal of the rock powder.

Mr Kanyike Amos (PW4), the caretaker of the suit land, informed the court that on 21 June 2011 he had heard tractors digging up the land and found the defendant's workers carrying away rock powder from deep pits that had been dug into the land. PW4 said that he called the plaintiff, as well as reporting the matter to both the LC1 general-secretary and the police. He stressed that the excavation did not come to a halt until the plaintiff had stopped the trucks from exiting the suit land with the excavated rock powder.

1.5 The defendant's case

The defendant presented three witnesses: Mr Livingstone Ssenkatuuka (DW1), Mr Nicholas Ssali (DW2), and Mr Charles Ariong (DW3). The defendant also relied on two exhibits: the Valuation Report (D. Ex. 1) and the Survey Report (D. Ex. 2).

Mr Livingstone Ssenkatuuka (DW1), the defendant's public relations officer for the Maya-Nabusanke project, said two truckloads of rock powder were mistakenly

excavated from a portion of the plaintiff's land measuring less than 5 decimals. He emphasised that the excavation had been stopped immediately by the LC1 generalsecretary and caretaker of the plaintiff's land. According to DW1, when the company tried to resolve the matter by giving the plaintiff the offer of either restoring the land to its original form or paying him UGX. 500,000, he rejected both offers.

Mr Nicholas Ssali (DW2), a qualified surveyor with a BA (Hons) in Land Economics, led evidence that, upon being instructed by MMAKS Advocates, he estimated the quantity of soil removed from the suit land to be about 316.145 square metres. DW2 indicated that, according to the Valuation Report (D. Ex. 1), the compensation due to the plaintiff would amount to UGX. 3,350,998.

The defendant also relied on the evidence of Mr Charles Ariong (DW3), a qualified surveyor with a BSc in Land Surveying from Makerere University and a diploma from Entebbe Survey Training School. In his evidence, DW3 referred to receiving instructions from MMAKS Advocates and explained that his role was to open the boundaries on the suit land which reveals that the total area of the suit land is 0.434 hectares/1.07 acres, the total area of the excavated portion is 0.035 hectares/0.09 acres.

2 Submissions by the plaintiff

2.1 Issue 1

The plaintiff's submission in regard to the first issue for determination was merely a rebuttable of the defendant's witness statements and not guidance to this Honourable Court on the method by which to assess the extent of the excavation. Counsel for the plaintiff asserted that the court should rely on the **locus in quo** visit, the Valuation Report, and the evidence of Mr Solomon Arinaitwe (PW3) to assess the extent of the excavation. He approached the issue through five heads of argument.

- 1) The plaintiff's counsel discounted the discrepancy between the value in the report and the plaint as due to the lapse of the two years between the time the suit was brought and the date of the valuation.
- 2) The counsel for the plaintiff described the defendant's amended written statement of defence, together with its entire body of evidence, as so fraught with contradictions and inconsistencies that it suggested deliberate untruthfulness. The plaintiff pointed out that according to Mr Livingstone Ssenkatuuka (DW1), less than 5 decimals had been excavated, whereas Mr Charles Ariong (DW3) spoke of 9 decimals. On the basis of these contradictions, counsel for the plaintiff concluded that the defendant's evidence must have been motivated by the desire to deceive the court on the extent of the excavation on the plaintiff's land.
- 3) The plaintiff's counsel also questioned the evidence of Mr Livingstone Ssenkatuuka (DW1), arguing that there was nothing to suggest that the defendant attempted to mitigate the damage, given that under cross-examination DW1 failed to prove to the court that he had met the plaintiff at all.
- 4) The counsel for the plaintiff questioned the evidence of Mr Nicholas Ssali (DW2) on two fronts. First, DW2's statement was said to contradict the plaintiff's Certificate of Title (P. Ex. 1), which is the accurate description of the suit land's boundaries and measurements; secondly, DW2 declared that the boundaries of the land were free of encroachment even though the act of trespass by the defendant had been admitted. It was the argument of the

plaintiff that in terms of section 59 of the Registration of Titles Act and section 33 of the Evidence Act, what is disclosed in the Certificate of Title is sufficient evidence and supersedes any other. Accordingly, the evidence led by Mr Nicholas Ssali (DW2) that the land is 0.434 hectares in size is false because the certificate reflects that it is 0.427 hectares.

- 5) Lastly, the plaintiff's counsel invited this Honourable Court to assess the extent of the damage based on the **locus in quo** conducted on 7 July 2013. Counsel also called upon the court to consider the import of section 43 of the Evidence Act, as well as the decision in **Oryema Mark v Ojok Robert**, HCCA No. 13 of 1998, which makes the point that findings made **locus in quo** are a good starting-point when determining the extent of damages.

2.2 Issue 2

As regards general damages, the plaintiff submitted that these are awarded at the discretion of the court to compensate an aggrieved party fairly for the inconvenience accrued as a result of a defendant's actions. Counsel took the view that in the present case the plaintiff is entitled to general damages because he successfully proved that he suffered loss due to the defendant's excavation of his land. Making a case for punitive damages, the counsel for the plaintiff relied on the authority of **Bank of Africa (U) Ltd v Mark Ssemaganda & Anor**¹ to highlight the rationale for punitive damages. His view was that punitive damages are a deterrent to future misconduct as they serve as a warning to others. Thus, in absence of any evidence that the defendant made a clear attempt to resolve the dispute amicably, these damages should be awarded to deter similar wanton acts of trespass. Counsel also invited the

¹ Court of Appeal Civil Appeal No. 131 of 2021.

court to award the plaintiff special damages amounting to UGX. 110,500,000, as stated in the Survey and Evaluation Report submitted as evidence in this case.

3 Submissions by the defendant

3.1 Issue 1

The defendant submitted that the court should be guided by the findings of the Valuation Report (D. Ex. 1) in determining the extent of the damage caused by the excavation. Counsel also sought to discredit the plaintiff's witness, making four main arguments in this regard:

- 1) The defendant halted the excavation as soon as the trespass was discovered. It also made efforts to resolve the matter by making two offers to the plaintiff: either to pay UGX. 500,000 for the damage, or to restore the affected portion to its original state. Counsel submitted that both offers were rejected by the plaintiff.
- 2) The extent of the excavation should be considered on the basis of the findings of Messrs Nicholas Ssali (DW2) and Charles Ariong (DW3). According to the defendant, DW3 found that while the total area of the suit land is 0.434 hectares/1.07 acres, the excavated area was only 0.035 hectares/0.09 acres. He invited the court to consider DW2's valuation of the excavated soil at UGX. 3,250,998 as reliable. Given that in terms of section 101 of the Evidence Act, the plaintiff bears the burden of proof in regard to special damages, the plaintiff's claim for UGX. 80,000,000 had not been established and should be rejected.
- 3) According to the defendant's counsel, neither the evidence of Mr Nasser Kalule (PW2) nor that of Mr Kanyike Amos (PW4) could be relied on in view of the grave inconsistencies that came to light. Counsel averred that PW2 was

unable to show the court the deep holes to which he had referred in his witness statement. As regards the evidence of Mr Solomon Arinaitwe (PW3), counsel said that valuation report was produced two years after the suit was filed and that there was a likelihood of interference with the site. In the interests of factual accuracy, it would have been best for an assessment to have been conducted immediately at the time of the excavation.

- 4) Finally, counsel challenged the plaintiff's expert reports, arguing that they do not provide clear scientific criteria by which to test the accuracy of their findings and that they should therefore be rejected by this court. He based this line of argument on the views of Mubiru J in **Iwa Richard Okeny v Obal George**, ² who asserted that the weight to be attached to an expert opinion depends on whether there are demonstrably objective criteria that guided the expert in reaching his or her opinion.

3.2 Issue 2

Concerning remedies, counsel submitted that the general damages to be awarded should be for the purpose of restoring the plaintiff to his previous state rather than enriching him with a profit. He also averred that the plaintiff is not entitled to punitive damages because it had rejected the defendant's proposals and because, furthermore, there was nothing to restore to the land apart from attending to the excavation, which had been carried out on merely 0.09 decimals of land. Counsel argued that the plaintiff is not entitled to any special damages because of the requirement that such claims must be strictly proven³ .

² Miscellaneous Application No. 63 of 2012.

³ **Luzinda v Ssekamatte & Ors** [2002] UGHCCD 20.

4 Issue 1: Determining the extent of the alleged act of trespass

In order to resolve the first issue for determination, it is essential to understand the mischief that the tort of trespass aims to address and, subsequently, the nature of compensation that should be awarded. In **Kiconco Medard v Persis Namuganza**, 4 Asiimwe J underscores that an individual's enjoyment of the right to private property is constitutionally guaranteed and that this is the reason that the law punishes those who interfere with such right. In essence, the tort of trespass is there to safeguard individuals from unwanted intrusions and ensure that their property rights are respected.

A tort is simply a civil wrong, 5 and when it takes the nature of trespass to land, an inference is made that there has been an unlawful entry by a person onto the land of another. **In Basely v Clarkson**,⁶ the defendant owned land adjoining the plaintiff's, and in mowing his own land, he involuntarily and by mistake mowed down some grass on the plaintiff's land. In this case, the court entered judgment for the plaintiff and awarded him damages.

4.1 Unjust interference with another's land

Trespass to land is unequivocally a property tort: it consists in an unjustifiable interference with another's person's possession of land and occurs when even a small part of the trespasser's anatomy crosses the relevant boundary.⁷ There is no shortage of authorities on the subject in the Ugandan courts, and our ever-evolving jurisprudence on it details the normative parameters of trespass. For instance, in

⁴ [2019] UGHCLD 56

⁵ See **Uganda Revenue Authority v Rabbo Enterprises (U) Ltd & Anor** (Civil Appeal No. 12 of 2004) [2017] UGSC 20 (10 July 2017).

⁶ (1681) 3 Lev 37; 83 ER 565.

⁷ In **Franklin v Jeffries, The Times**, 11 March 1985, finding that a tort of trespass was established by a mere fact that an unwanted arm came through an open window.

Justine EMN Lutaya v Stirling Civil Engineering Company Ltd*, ⁸ the appellant, a registered proprietor of **mailo land who, in 1984, granted a lease of it to a company, claimed damages for trespass from the respondent. The Supreme Court took the view that trespass to land occurs when a person makes unauthorised entry upon land and thereby interferes, or portends to interfere, with another person's lawful possession of that land. The Court stressed that in a tort of trespass to land, the tort is committed not against the land but the person who is in actual or constructive possession of it.

4.2 The tort of trespass through the prism of the ad coelum principle

The importance attached to a tort of trespass is probably best conveyed by the **ad coelum** principle, ⁹ which has its origins in Roman law and was first applied in common law in **Bury v Pope**.¹⁰ In terms of this principle, even the slightest crossing of a property boundary is sufficient to constitute an act of trespass. ¹¹ Thus, in **Bocado SA v Star Energy Weald Basin Ltd & Another**,¹² the question for the Supreme Court was whether an oil company that had been granted a licence to search for and extract petrol or gas under land belonging to another without obtaining the landholder's agreement or without any statutory right under the Mines (Working Facilities and Support) Act 1966 to do so, had committed an actionable trespass. The Court held that since Bocado, the aggrieved party, did own the strata of land at the depth of the oil well, there was hence a trespass.

⁸ [2003] UGSC 39.

⁹ The rule of **cuius est solum, eius est usque ad coelum et ad inferos** means that an owner of the surface owns the airspace above it as well as the soil beneath it to the bottom of the earth (with exceptions).

¹⁰ **Bury v Pope** (1586).

¹¹ Clerk JF & Lindsell WHB, *Law of torts* (1889). London: Sweet & Maxwell (1907) at 267.

¹² [2010] UKSC 35

4.3 The absence of the need to prove intention

Unauthorised entry upon another's land is tortious whether or not the entrant knows that he or she is trespassing, with the result that even 'trifling inconveniences' that do not interfere with the plaintiff's use and enjoyment of property are actionable.¹³ There is, in other words, no need to prove intention to cause damage or fault. It does not matter how trivial the action is – as long as it is an entry, it is not justified by law.

What would seem flimsy actions are thus actionable in trespass. Indeed, in *Hannabalsen v Sessions*, ¹⁴ it was held that the act of stretching a hand across a wall marking a boundary between the defendant and another amounted to a trespass by the defendant.

Similarly, in *Conway v George Wimpey & Co Ltd*,¹⁵ it was held that it was irrelevant that the person was unaware that he or she was trespassing or even honestly under the belief that the land was his or hers.

4.4 Trespass is actionable per se

Trespass is actionable per se, that is, it does not matter whether the claimant suffered any damage. Thus, in *Westripp v Baldock*,¹⁶ the court held that a ladder leaning against the claimant's wall was a trespass. Where the defendant unlawfully enters onto the space above the plaintiff's land or beneath its surface, there is an infringement in terms of the *ad coelum* doctrine. According to this doctrine, a property holder has rights not only to the surface of the land itself but to the airspace above it and the ground beneath. For instance, in *Bulli Coal Mining Co v Osborne*,¹⁷

¹³ R Nakayi, 'Weaponisation of trespass to land and its implications for land justice and enjoyment of property rights in neoliberal Uganda' 7(1) *Strathmore Law Journal* 179–209.

¹⁴ 90 N. W. 93, 95 (Iowa 1902).

¹⁵ [1951] 2 KB 266.

¹⁶ [1938] 2 All ER 799.

¹⁷ (1899) Privy Council, AC 351.

the defendant mined from their land through to the plaintiff's, and this was held to be trespass to the subsoil.

4.5 Determination

The plaintiff's case was that the defendant unlawfully entered his land, excavated rock powder, and thereby damaged his land; as a result of the unlawful actions of the defendant, the plaintiff suffered loss and damage. Mr Solomon Arinaitwe (PW3) estimated the loss of value to be at UGX. 85,000,000 and 25,500,000 as per P. Ex 3. The act of trespass in the case before me is not disputed; all that is disputed is the extent of the alleged damage to the suit property due to the excavation of rock powder from the plaintiff's land.

For the court to determine the extent of the excavation – on the basis of which a finding of trespass to land has been made – a careful analysis of PW3's valuation and survey report, dated 2 October 2013 and admitted and marked as P. Ex 3, is required. Equally important is an examination of the survey report dated 14 July 2011 and admitted and marked as P. Ex2. When this evidence is compared with the defendant's valuation report, dated 2 July 2013 and admitted and marked as D. Ex 1, a number of deductions can be made:

- 1) Whereas D. Ex 1 asserts that the total area of land excavated by the defendant measured approximately 316.145 square metres (the equivalent of about 8 decimals), the plaintiff in P. Ex 2 below claimed that the rock powder excavated by the defendant covered an area measuring 0.52 acres (equivalent to 52 decimals). This was supported by the valuation survey report admitted and marked as P. Ex 2.
- 2) What becomes important in the examination of the extent the tort of trespass is the evidence that, as a consequence of the excavation of rock powder on the

plaintiff's land, a shallow depression was created on the suit land due to the volume of ground removed from it. A good guide is found in notes taken by the court at the **locus in quo** visit dated 7 July 2017.

On a balance of probabilities, the evidence flowing from P. Ex 2, dated 14 July 2011, provides the earliest and most accurate description of the excavated land.

4.6 Examination

In my view, the court, in determining the extent of trespass in this instance, must also go beyond the issue of the volume of the rock powder and consider the impact of its extraction on the integrity of the suit land. In considering this subset of the question, the court recognises that where two expert witnesses present findings that seem not to speak to each other, it must arrogate to itself the role of being the better expert.

Section 43 of the Evidence Act is indeed the basis on which a court may rely on the opinions of experts whenever a point relating to a scientific question is raised. The acceptance of such opinion requires that experts demonstrate sufficiency of knowledge in terms of their education, experience, and skill.¹⁸ Yet while the role of experts is essential, it is nevertheless limited to helping a court of law understand complex matters. Thus, reports of experts remain opinion that merely lays a foundation on which a court can base itself in order to draw its own

conclusions. Here, it is not disputed that, in examining reports by expert witnesses and before attaching any weight to the opinions therein, a court must assess whether a criterion is in place that other experts in the same field usually follow in arriving at their appraisals.¹⁹

¹⁸ See section 53 of the Evidence Act. See also **Kasule v Kayongo** (1999) 4 KALR 293.

¹⁹ See Iwa **Richard Okeny** (note 2).

In the complaint before this court, it is noted that, whereas the defendant's expert reports focus on the amount of rock powder extracted from the suit land, the plaintiff's expert reports focus rather on the impact of the extracted rock powder on plans for the future development of the land. This court finds that the dispute before it is better determined by considering the impact of the act of trespass than by considering the amount of rock powder extracted from it in the act of trespass. The details in this regard are discussed below.

5 Remedies available to the parties

As already highlighted, a tort of trespass is actionable per se, with the wrong usually committed against the person and not the land itself. It was reiterated that it does not matter how insignificant or unintentional the wrong was; indeed, the courts are not required to consider whether the defendant was in fact reasonable – a position that was adopted in **James Nsibambi v Lovinsa Nankya**.²⁰ In this case, the respondent inherited a **kibanja** in 1950 and cultivated on it. The appellant entered upon it and built a house in 1976, alleging that he had purchased it. The trial magistrate declared him a trespasser and ordered him to pay 1,500 shillings as compensation but allowed him to remain on the land. On appeal, the Court rejected the attempt by the magistrate to be reasonable in a trespass case without justification on record.

In the present case, the fact of trespass is uncontested, and thus the key question that remains is the assessment of general, special, and punitive damages, as well as costs.

²⁰ [1980] HCB 81.

5.1 General damages

The grant of general damages is a discretionary exercise of the judicial power and should always be undertaken with caution.²¹ In determining the nature and extent of general damages, the courts are called upon to consider the value of the subject matter, the economic inconvenience suffered, and the extent of the breach.²² In summary, general damages are restitutive in nature such that the injured person can be returned to the position that he or she was in before the wrong. Arguably, it is preferred that the court consider whether the plaintiff ever attempted to mitigate the wrong. The consensus of the courts seems to be that damages are intended to give the wronged persons compensation for the loss or injury suffered.²³

5.1.1 Determination

In this case, despite the fact that the defendant's workers were stopped from further extracting rock powder, significant damage to the plaintiff's land was proven. This damage seriously affected his planned future of his land (the plaintiff wished to construct a three-storey house on the same piece of land). Additionally, as a result of the destruction of the suit land's soil integrity (illustrated in the pictorial evidence as well as the expert reports), the impact of the commission of the tort of trespass is all but certain. The proven environmental degradation caused by the excavation of rock powder from the suit land is enough to weigh heavily on this court and lead it to grant general damages of UGX. 50,000,000.

²¹ *Fred Kamugira v National Housing & Construction Company* CS No. 127 of 2008 per Bashaija J.

²² *Uganda Telecom v Tanzanite Corporation* [2005] 351.

²³ *Robert Cuosesens v Attorney General* SCCA No. 8 of 1999.

5.2 Special damages

Whenever a party makes a prayer for special damages, a particular injunction is then imposed by a court requiring that those damages always be pleaded and proven.²⁴ Special damages are usually linked to the actual money lost, and must flow directly and immediately from the breach of contract. The principle is that these damages are assessed from the time that the hearing of the case began and are granted on the ground that the liable party should have anticipated that an injury would be suffered.²⁵

5.2.1 Determination

The value given in the report deals largely with the future extent of the impact of the tort of trespass rather than demonstrating the actual costs incurred. What this court therefore finds as proven is the cost of producing the two reports, namely UGX 800,000.

5.3 Punitive damages

Punitive, or exemplary, damages are awarded to punish, deter, and express the Court's outrage at the defendant's egregious, high-handed, malicious, vindictive, oppressive, and/or malicious conduct.²⁶ There are a number of exceptions to the rule,

²⁴ Blackstone, W *The laws of England volume II* Chicago: University of Chicago Press (1979) at 218 defines 'special damages' with reference to restitution of a wronged party that does not flow naturally from the wrong but is nonetheless the outcome of the circumstances of the wrong; depending on the wrong complained of, the injured party is then entitled to compensation. According to Black HL & Black HC *Black's law dictionary* (6th ed) Berlin: Springer (1891–1991) at 392, para I 1, 'special damages' refers to those damages 'which are [the] actual, but not the necessary, result of the injury complained of, and which in fact follow it as a

natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions ... which do not arise from wrongful act itself, but depend on circumstances peculiar to the infliction of each respective injury'.

²⁵ See *Uganda Commercial Bank v Deo Kigozi* [2002] 1 EA 293.

²⁶ *Owiny v Okello* (Civil Suit 28 of 2019) [2024] UGHC 52 (19 February 2024).

to the effect that damages are awarded to compensate the aggrieved party and that they are determined based on the defendant's misconduct – not the injury or loss suffered by the claimant. The guidance in the decision in *Obongo & Anor v Municipal Counsel of Kisumu*²⁷ is that an award of exemplary or punitive damages should be limited to three categories of cases: first, where there is oppressive, arbitrary, or unconstitutional action by public servants; secondly, where the motive of making a profit is a factor; and, thirdly, where a statute stipulates the payment of punitive or exemplary damages.

5.3.1 Determination

I have considered the defendant's assertions that it tried to settle the matter by making two offers, namely either restoring the portion of the plaintiff's land affected by the excavation, or paying a sum of UGX. 500,000 to the plaintiff for the excavated rock powder. I have also considered the plaintiff's denial that he was ever approached by the defendant in regard to a settlement. In view of the principles noted above in respect of the award of punitive damages, I find no need to award punitive damages due to the absence of evidence that points to any egregious or malicious act on the part of the defendant.

6 Final orders

This court grants the following as the final orders to the plaintiff with the following reliefs:

- 1) UGX. 50,000,000 being the general damages for the trespass.
- 2) Interest on the general damages at the rate of 4% per annum from the date of judgment until payment in full.

²⁷ [1971] EA 91.

- 3) I also award UGX 800,000 in special damages at the rate of 4% per annum from the date of the filing of the suits until payment in full.
- 4) Costs of the suit.

Douglas Karekona Singiza

Acting Judge

7 June 2024

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