

UGANDA / JUDGMENT

Kazibwe v Nsibambi (Civil Appeal 1 of 2023) [2024] UGHC 700 (25 June 2024)

[2024] UGHC 700**COURT**

High Court of Uganda

BEFORE

Oyuko Anthony Ojok, J

CASE / FILE NUMBER

Civil Appeal 1 of 2023

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT MPIGI****CIVIL APPEAL NO. 0001 OF 2023****(Arising from Civil Suit No. 003 of 2022)**

KAZIBWE HARUNA..... \$5\$

VERSUS**NSIBAMBI SAFIKI.....****BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK****Judgment**

The appellant brought the instant appeal against the decision of His Worship Asiimwe Bob Simplex, Magistrate Grade one delivered on the 9th February, 2023. The grounds of the appeal according to the Amended Memorandum of appeal are as follows:

- 1. That the learned trial Magistrate erred in law and fact when he held that there existed a contract between the respondent and appellant in respect of the eight cows whereas not.

- 2. That the learned trial Magistrate erred in law and in fact in holding that an oral contract whose subject matter exceeds 25 currency points is enforceable to the extent of the twenty currency points.
- 3. That the learned trial Magistrate erred in law and fact when he awarded general damages of UGX 4,000,000/ \$=\$ without any lawful justification.

Brief background:

The respondent instituted a civil Suit against the appellant claiming that the appellant had in April 2022 requested to purchase from him on credit four cows 25 to slaughter for sale during the Easter season to which the respondent obliged. That it was agreed between the parties that payment for the cows would be after the sale of the meat which the appellant apparently did not comply with resulting into a debt owed to the respondent of UGX 8,000,000 for the four cows. That demands for the said amount of money yielded no results. 30

The appellant on the other hand averred that all the monies owed to the respondent during their dealings were paid to him either by cash or through Mobile money account numbers 0770945119 and 0703282945 belonging to the respondent and

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as such there was no money owed to him by the appellant. That on 20th August, 2022, having always bought cows from the respondent, he sent Damulira Kiwanuka to buy another cow at UGX \$1,760,000/\$ = which money the respondent took but declined to deliver the cow claiming that the appellant owed him money. The matter was reported to Police and the appellant found that the respondent had

\$\mathsf{S}\$ also opened a case against him for a claim of UGX 8,000,000/ \$=\$. The parties were advised to go to court. Hence, the civil suit.

Representation:

Ms. Nalunkuma Esther appeared for the appellant. The respondent was unrepresented. Only the appellant filed written submissions. 10

Duty of the \$1^{\text{st}}\$ appellate court:

The first appellate Court is mandated to subject the proceedings and Judgment of the lower Court to a fresh scrutiny and if necessary make its own findings. In the case of Bogere Charles v. Uganda, Criminal Appeal No. 10 of 1996, Court held that;

"The appellant is entitled to have the first appellate Court's own consideration and views of the evidence as a whole and its own decision thereon. The first appellate Court has a duty to rehear the case and reconsider the materials before the trial Judge. Thereafter, the first appellate Court must make its own conclusion, but bearing in mind the fact that it did not see the witnesses. If the question turns on demeanor and manner of witnesses, the first appellate Court must be guided by the trial Judge's impression."

This court is therefore duty bound to evaluate the evidence on record and arrive at its own conclusion, bearing in mind that it did not have the benefit of the observing the demeanor of the witnesses. (See: *Selle v. Associated Motor Boat Co.* [1968] E. A. 123).

It is also trite law that the appellate court can only interfere and alter the findings of the trial court in instances where there was a misdirection as to law or fact or an error by the lower court which goes to the root of the matter and occasioned a miscarriage of justice. (See: *Kifamunte Henry v. Uganda S. C. C. A No. 10/1997*).

Resolution of the appeal:

Ground one: That the learned trial Magistrate erred in law and fact when he held that there existed a contract between the respondent and appellant in respect of the eight cows whereas not.

2 | Page

Counsel for the appellant submitted that it was the evidence of the appellant that despite the fact that he used to buy cows for the respondent he had never bought more than one or two cows at any given time. That whenever he bought cows from the respondent he would pay for the same and this was between the years 2021

- and 2022. That however, in their last transaction in August 2022, he paid the \$5 respondent UGX 1,760,000/= for a cow and the same was never delivered to him. That during cross examination, it was never stated that there was a contract of sale of 4 cows worth UGX 8,000,000/ \$=\$ between the parties.
- \$I have carefully looked at the court record and considered the submissions for the appellant under this ground. The evidence as adduced by both parties was to the effect that the two parties had a business relationship, where the appellant would purchase cattle from the respondent and this happened on different occasions. That he would make payments both in cash and electronically through Mobile Money. The appellant stated that he did not owe the respondent any money since he had never at any one point bought more than one or two cows at a go from the respondent and that he would always pay for the cows. That instead it was the

- respondent who owed him UGX \$1,760,000/\$ = which he had failed to refund nor deliver the cow for which it was paid. The trial Magistrate in his judgment found that from the evidence as adduced for
- the respondent there existed an oral contract whereof the appellant owed him UGX 20 \$8,000,000/\$ = while the appellant's evidence was full of inconsistencies which pointed to falsehoods. While, there were contradictions in the evidence of the appellant in regard to number of times he had dealt with the respondent in the purchase of cows; I will only dwell on the alleged last transaction where the appellant was said to have obtained the debt of UGX 8,000,000/ \$=\$ arising from an oral contract for purchase of four cows from the respondent.

I find that there were contradictions in the evidence of PW1 and PW3 who was said to have been present when the respondent gave the cows to the appellant. While PW1 stated that the cows were taken by the appellant at 5pm, PW3 during cross examination stated that they were taken between 1pm-2pm after the appellant had requested him to help take the cows to Kayabwe but they failed to agree on the payment.

Secondly PW1 during cross examination stated that the four cows were taken by foot since the appellant came with someone else, him on the motorcycle as the other person he came with was meant to direct the cows as the appellant followed. on the motorcycle.

PW4 on the other hand in examination in chief stated that the appellant came alone on his motorcycle then left after the negotiations and returned at 2:00pm with someone and they left with four cows.

- While the trial Magistrate attacked the inconsistencies in the evidence of the appellant he did not seem to take note of the fact that the said eyewitnesses of the $\$$ transaction where the four cows were allegedly bought equally gave contradictory evidence. The trial Magistrate went on and observed that the evidence of the eyewitnesses being PW3 and PW4 were very consistent pointing to truthfulness on their side and concluded that there was an oral contract for UGX \$8,000,000/= \$.
- Having re-evaluated the evidence as adduced by the parties in the lower court it is \$10\$ my finding that the trial Magistrate misdirected himself when he found that there was an oral contract of UGX 8,000,000/ \$=\$. Whereas, the eyewitnesses were found to be consistent in their evidence by the trial Magistrate, I disagree with this finding. Save for the fact that the said witnesses described the cows that were allegedly bought similarly, they both had different recollections of what exactly transpired on that day.

This ground of appeal hereby succeeds.

Ground two: That the learned trial Magistrate erred in law and in fact in holding that an oral contract whose subject matter exceeds 25 currency points is enforceable to the extent of the twenty currency points

Counsel for the appellant cited **Section 10 (2)** of the Contracts Act which is to the effect that; a contract may be oral or written or partly written or may be implied from the conduct of the parties. However, **Section 10 (5)** provides that; a contract the subject matter of which exceeds twenty-five currency points shall be in writing. As such contracts whose subject matter is above UGX \$500,000/\$ = must be in writing. And where the subject matter which exceeds UGX \$500,000/\$ = is not in writing, the court shall not maintain such a suit. Counsel quoted the case of **John Kagwa v. Kolininsaat & Another**, HCT \$-00\$ - CS \$-0318\$ of 2012, where it was held that; a suit to enforce payment under a contract whose subject matter was \ \$ 500,000 (over I billion Ugandan Shillings) which was not in writing could not be sustained and it was sufficient to dispose of the whole case. The reason being that the courts cannot act on guesswork particularly where it is black and white that such contracts must be in writing.

Counsel went onto submit that the trial Magistrate erred in law when he held that **Section 10(5)** of the Contracts Act cannot be read in total disregard of **Section 10 35 (2)** of the same Act. That the trial Magistrate found that the contract though

4 | Page

exceeding twenty-five currency points was not illegal and was only enforceable in as far as the law permits and that is in regard to 25 currency points and not beyond.

The contention by the appellant under this ground is that a contract of over twenty-five currency points must be in writing and in the instant case since the respondent's claim was that the appellant owed him UGX \$8,000,000/\$ = then it should have been reduced into writing.

Section 10(5) of the Contracts Act 2010 provides that;

"A contract the subject matter of which exceeds twenty-five currency points shall be in writing."

In the case of **Karangwa Joseph v. Kulanju Willy**, Civil Appeal No. 03 of 2016, it 10 was held that; generally, a contract which exceeds twenty-five currency points shall be in writing. The requirement under **Section 10 (5)** of the Contracts Act for the contract to be in writing is mandatory.

Also, in the case of **Solomon Semakula Kayinda v. Auger Revival Ministries Limited**, Civil Suit No. 0880 of 2020, it was held that;

"According to section 10 (5) of The Contracts Act, 7 of 2010, a contract the subject matter of which exceeds twenty-five currency points \$(500,000/=)\$ must be in writing. This requirement is satisfied by any signed writing that;

- \$20 (i)\$ reasonably identifies the subject matter of the contract;

- (ii) is sufficient to indicate that a contract exists; and
- (iii) states with reasonable certainty the material terms of the contract.

Writing all material terms is not required; what is required at a minimum in a sales of goods contract is an acknowledgment of agreement by the parties and a specification of the quantity of goods that are to be exchanged. Multiple writings relating to each other can be combined to show that a single contract exists to satisfy this requirement."

The alleged contract between the appellant and the respondent in my view was not a valid contract considering that **Section 10(5)** of The Contracts Act, 2010 requires a contract whose subject matter exceeds twenty-five currency points to be in writing. The provisions of the said section are mandatory in nature.

In the instant case the contract was not in writing and there is no law that provides that for contracts which exceed twenty-five currency points the party making the claim has the leverage to enforce the contract to the extent of twenty-five currency points.

5 | Page

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I find that the trial Magistrate accordingly erred in that regard. This ground of appeal therefore also succeeds.

Ground three: That the learned trial Magistrate erred in law and fact when he awarded general damages of UGX 4,000,000/= without any lawful justification.

- Counsel for the appellant submitted that the law on general damages is that they $\$S$ are awarded at the discretion of court and the purpose is to restore the aggrieved person to the position they would have been had the breach or wrong not occurred. (See: *Hardley v. Baxandale* (1894) 9 Exch 341, *Charles Achire v. E. Engola*, H. C. C. S No. 143 of 1993 and *Kibimba Rice Ltd v. Umar Salim*, S. C. C. A No. 1992). That in assessment of general damages the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through, the nature and extent of the injury suffered. Thus, an award of UGX \$4,000,000/\$ = as general damages was unjustified in the instant case not to mention that it was excessive.
- In the instant case the trial magistrate awarded general damages to a tune of UGX 15 \$4,000,000/\$ = basing on the fact that the respondent had made a loss of UGX \$7,500,000/=.

The appellate court can only interfere with the award of general damages if they were awarded based on a wrong principle of law or the amount awarded is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff was entitled.

The case of Crown Beverages Ltd v. Sendu Edward, Civil Appeal No. 01 of 2005, cited the case of Owen v. Sykes (1936) 1 KB 192, where the Court of Appeal of England felt that although if they had tried the case, in the first instance they would have probably awarded a smaller sum as damages yet they would not review the finding on damages as they were not satisfied that the trial judge acted upon a wrong principle of law, or that amount awarded as damages was so high as to make it an entirely erroneous estimate of the damages to which the plaintiff was entitled. The Court of Appeal followed the case of Flint vs., Lovell (1935) 1 KB 354.

30 Court further held that; The above principle has been applied in East Africa and Uganda in the case of Muljibhai vs. the Particular Anor (1944) EACA, Mitdford Bowker (1947) 14 EACA 20; Watson vs. Powles (1968) IQ596, and Obonyo vs. Municipal Council of Kisumu (1971) EA 91 of 96.

It is my considered view that the award of general damages in the instant case was not only erroneously made but was also excessive. I accordingly set aside the award, 35 of general damages to a tune of UGX 4,000,000/ \$=\$.

6 | Page

This ground of appeal hereby succeeds.

In a nutshell, this appeal succeeds on all grounds. The appeal is hereby allowed with costs. I so order.

Right of appeal explained.

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OYUKO ANTHONY OJOK JUDGE 25/6/2024

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