

**Mwebe Bwogi v Bwogi (Civil Suit
103 of 2019) [2023] UGHCCD 350
(15 November 2023)**

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was already in court.

- [3] The Defendant did not file a Written Statement of Defence despite sufficient evidence of service of process. The suit, therefore, proceeded ex parte pursuant to the provisions under Order 9 rules 10 and 11 (2) of the CPR. The Plaintiff was represented by **Ms. Patricia Nambi, Ms. Monica Nambi and Mr. Anthony Kusingura** from M/s Nsubuga & Co. Advocates. The Defendant was served with a hearing notice as required under the law but still made no appearance and the hearing proceeded ex parte in accordance with Order 9 rules 20(1)(a) of the CPR. Evidence was adduced by way of witness statement and the Plaintiff led evidence of one witness. Counsel made and filed written submissions which I have taken into consideration during the determination of the matter.

Issues for Determination by the Court

- [4] Two issues were set out in the Plaintiff's scheduling notes for determination by the Court, namely;
- a) **Whether the Defendant is liable for the tort of conversion?**
 - b) **Whether the Plaintiff is entitled to the remedies sought?**

Burden and Standard of Proof

- [5] In civil proceedings, the burden of proof lies upon he who alleges.

Section 101 of the Evidence Act, Cap 6 provides that;

- *(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist*.
- *(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person*.

- [6] Section 103 of the Evidence Act provides that the *"burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence,* unless it is provided by any law that the proof of that fact shall lie on any particular person"*. Accordingly, the burden of proof in civil proceedings normally lies upon the plaintiff or claimant. The standard of proof is on a balance of probabilities. The law however goes further to classify between a legal burden and an evidential burden. When a plaintiff has led evidence establishing his/her claim, he/she is said to have executed the legal burden. The evidential burden thus shifts to the defendant to rebut the plaintiff's claims.

The Evidence

- [7] The Plaintiff who testified as PW1 and the only witness in the matter stated that he was aged 67 years, a retired Engineer, and a paternal uncle to the Defendant. The Plaintiff initially worked and lived in Sweden and returned to Uganda in March 2018 with an intention of

setting up a trucking and transportation business. He was, however, advised by his nephew (the Defendant) to invest in a medical Centre which the Defendant stated was more profitable and undertook to set up for the Plaintiff. The Plaintiff then remitted money in two separate instalments of UGX 43,000,000/= on 14th February 2018 through one James Mwebe, a brother to the Defendant. The Defendant signified that he had received the money that he went ahead and used for purchase of medical equipment and to set up a medical centre business known as St. Paul's Medical Centre at Tula, Kawempe in Kampala. The Plaintiff later handed over to the Defendant in cash a sum of UGX 48,000,000/= for purchase of a motor vehicle to run the errands of the business. The Defendant indeed purchased Motor Vehicle registration number UBD 848K Prado which the Defendant registered in his personal names instead of the business name or that of the Plaintiff.

- [8] Subsequently, the Defendant claimed ownership of the business and all its assets including the motor vehicle, denied the Plaintiff access to the business or paying any profits or other benefits from the business. This was despite acknowledging the Plaintiff's interest in the business and making several promises to refund the Plaintiff's monies. The Plaintiff was prompted to lodge a complaint at Wandegaya Police Station, whereupon the Defendant was arrested leading to entry into a memorandum of understanding on 4th November 2019 in which the Defendant agreed to refund the monies advanced in the sum of UGX 128,000,000/= as shown in PE6. The Defendant indeed made a partial payment of UGX 45,000,000/= leaving a balance of UGX 83,000,000/= which the Defendant refused or failed to pay. The Plaintiff thus claims the outstanding balance with damages, interest and costs.

Resolution of the Issues;

Issue 1: Whether the Defendant is liable for the tort of conversion? Submissions

- [9] Counsel for the Plaintiff relied the decision in **Oketha Dafala Valente v Attorney General*, HCCS No. 0069 of 2004* to submit that to constitute the tort of conversion, there must be a wrongful act of dealing with goods in a manner inconsistent with the owner's rights, and an intention in so doing to deny the owner's rights, or to assert a right inconsistent with them. Counsel referred the Court to paragraphs 11, 12 and 14 of the Plaintiff's witness statement wherein it is stated that the Defendant has asserted ownership over the medical centre and all the assets including the motor vehicle. The Defendant, having agreed to set up the medical centre for the Plaintiff, has refused to hand over possession of the same, allowing access thereto or providing any benefits from the medical centre to the Plaintiff.
- [10] Counsel further submitted that the Plaintiff had led evidence to prove that he owns or has a right to immediate possession of the medical centre business and its assets including a motor vehicle. Counsel submitted that the Defendant had committed a wrongful act of dealing with the property in a manner inconsistent with the owner's rights by refusing to hand over the medical facility and assets thereto; and registering the vehicle into his own names for his personal benefit. Counsel concluded that the Plaintiff had therefore proved

that the property was accordingly converted and prayed to court to find this issue proved by the Plaintiff.

Determination by the Court

[11] In law, for a plaintiff to succeed on a claim based on the tort of conversion, he or she must establish that the defendant unlawfully took possession of their property with the intention of ascertaining a right over them that is inconsistent with that of the owner of the property. The tort of conversion is committed by wrongfully taking possession of goods, destroying them or simply refusing to give them up when demanded. See: **Winfield and Jolowicz on Tort 15th Edition page 588.**

[12] In Halsbury's Laws of England, 4th Edition, page 355 paragraph 548, it is stated as follows;

"To constitute the first form of conversion, there must be a positive wrongful act of dealing with the goods in a manner inconsistent with the owner's rights and an intention in doing so to deny the owners' rights or to assert a right inconsistent with them. This inconsistency is the gist of the action. There need not be any knowledge on the part of the person sued that the goods belong to someone else, nor need there be any positive intention to challenge the true owners' rights. Liability in conversion is strict and fraud or other dishonesty is not a necessary ingredient in the action.

A second form of conversion is committed where the goods are detained by the defendant. A wrongful detention gave rise to an action for detinue before detinue was abolished by the Torts (Interference with Goods) Act 1977 and now gives rise to an action in conversion. The normal method of establishing a wrongful detention is to show that the claimant made a demand for the return of the goods and that the defendant refused after a reasonable time to comply with the demand.

The third form of conversion lies for the loss or destruction of goods which a bailee has allowed to happen in breach of his duty as a bailor."

[13] In the instant case, there is evidence before the Court from the testimony of the Plaintiff that he had an arrangement with the Defendant under which the Plaintiff would provide the money and the Defendant would set up a medical facility, equip it and purchase a motor vehicle to run the errands of the business. Although this arrangement was not in writing, its existence in fact is capable of being established from the evidence and circumstances that have been placed before the Court. In absence of any evidence to the contrary or in contravention of the Plaintiff's evidence, the evidence is capable of proving that the Defendant received the monies remitted by the Plaintiff, set up the business known as St. Paul's Medical Centre, purchased a motor vehicle for business operations and started business operations. There is evidence that the Defendant registered the motor vehicle in his personal name.

- [14] The Plaintiff also showed in evidence that after set up of the business, the Defendant denied the Plaintiff access to the business or a share in the profits or other benefits from the business. The Defendant also refused to transfer the motor vehicle into the name of either the business or the Plaintiff. The Defendant further refused to refund the monies contributed into the business. The Plaintiff was prompted to report the matter to police whereat the parties executed a memorandum of understanding dated 4th November 2019 in which the Defendant agreed to pay a sum of UGX 128,000,000/= to the Plaintiff and made an initial deposit of UGX 45,000,000/= as evidenced by the document admitted on record as PE6.
- [15] In view of the above uncontested evidence, the conduct of the Defendant in refusing to deliver up possession of the business and the motor vehicle, among other assets, to the Plaintiff constituted a wrongful act that was inconsistent with the Plaintiff's right of ownership which amounts to the tort of conversion. The Plaintiff has, therefore, satisfied the Court on a balance of probabilities that the Defendant converted property belonging to the Plaintiff and is liable in conversion. Issue 1 is accordingly answered in the affirmative.

Issue 2: Whether the Plaintiff is entitled to the remedies sought?

- [16] The Plaintiff sought for a declaration that he is the rightful owner of the business known as St. Paul's Medical Centre, an order for delivery up of the business or payment of its value. Evidence has been led and accepted by the Court that through an understanding expressed in a document admitted as PE6, the Defendant agreed to pay UGX 128,000,000/= being the amount agreed to be refunded as the value of the business and assets to which the Plaintiff was entitled. Evidence indicates that the Defendant paid in part a sum of UGX 45,000,000/=. This left an outstanding balance of 83,000,000/=. My understanding of the evidence is that upon payment of the agreed sum of UGX 128,000,000/=: the Plaintiff would relinquish his claim in the medical centre business and its assets. This implies that the Plaintiff is entitled to payment by the Defendant of the outstanding sum of UGX 83,000,000/=. Since this arrangement was reached during the pendency of the suit, the Plaintiff remains entitled to his claims in general damages, interest and costs. The claim by the Plaintiff for special damages was superfluous since none were specifically pleaded and proved in evidence.
- [17] Regarding the claim for general damages, the law is that general damages are awarded at the discretion of the Court and the purpose is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: **Hadley v Baxendale* (1894) 9 Exch 341; *Charles Acire v M. Engola*, HC Civil Suit No. 143 of 1993* and **Kibimba Rice Ltd v Umar Salim*, SC Civil Appeal No. 17 of 1992*. In the assessment of damages for conversion, I have found relevant the following text from **Halsbury's Laws of England, 4th Edition at page 389 paragraphs 615 and 616;**

*"In general, damages in conversion are compensatory, their object being to repair the actual loss which the claimant suffers by reason of the conversion. This conforms to the general rule that damages in tort must (so far as money can do) put the person whose right has been invaded in the same position as if it had been respected. Accordingly, an award of damages in conversion

must operate neither by way of penalty to the defendant nor by way of windfall to the claimant. In general, there must also be a causal connection between the act of conversion and the loss sustained, and the proof of actual loss. ... The conventional measure of the damages in conversion is the value of the goods converted together with any consequential loss which is not too remote. That measure normally applies where the conversion takes the form of wrongful deprivation and the goods are not later returned".*

- [18] On the case before me, the value of the goods converted has already been catered for under the sum agreed to be refunded. What the Court has to consider is whether any other consequential loss that is not too remote to the conversion was suffered by the Plaintiff. It was shown by the Plaintiff that he has suffered business loss since 2018 as the Defendant never disclosed to him any profits obtained from the business. The Plaintiff further stated that he has suffered mental anguish, psychological torture and physical inconvenience. Counsel for the Plaintiff proposed a sum of UGX 200,000,000/= as general damages. Considering the circumstances of the case, I have found a sum of UGX 50,000,000/= appropriate as general damages to the Plaintiff and I award the same.
- [19] On interest, the discretion of court regarding award of interest is provided for under Section 26(2) of the Civil Procedure Act. The basis of an award of interest is that the defendant has kept the plaintiff out of his money and the defendant has had the use of it himself and ought to compensate the plaintiff accordingly. See: *Premchandra Shenoï and Anor v Maximov Oleg Petrovich, SCCA No. 9 of 2003* and *Harbutt's 'plasticine' Ltd v Wayne tank & pump Co. Ltd* *[1970] QB 447*. In determining a just and reasonable rate of interest, court takes into account the ever rising inflation and drastic depreciation of the currency. A plaintiff is entitled to such rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any further economic vagaries and the inflation and depreciation of currency in the event that the money awarded is not promptly paid when it falls due. See: *Kinyera v the Management committee of Laroo Building Primary School HCCS 099/2013*.
- [20] In the present case, the Plaintiff has been denied use of the money he invested in the business. According to the document PE6 on record, it was agreed that interest on the agreed sum would be discussed after full payment of the agreed sum. This however never happened. It is testimony, however, to the fact that the Plaintiff is entitled to interest on the awards made to him under the principal claim and in general damages. Accordingly, I award interest on the principal sum of UGX 83,000,000/= at the rate of 15% per annum from 4th November 2019 when the agreement to pay was made until full payment. I also award interest on the general damages at the rate of 8% per annum from the date of judgment until full payment.
- [21] Regarding costs of the suit, under Section 27 of the Civil Procedure Act, costs follow the event unless the court upon good cause determines otherwise. Having succeeded on the suit, the Plaintiff is awarded costs of the suit.

[22] In all, therefore, the suit by the Plaintiff succeeds and judgment is entered for the Plaintiff against the Defendant for;

- a) Payment of the sum of UGX 83,000,000/= being the outstanding sum in compensation of the value of the business plus assets that were converted.
- b) Payment of the sum of UGX 50,000,000/= as general damages for conversion.
- c) Payment of interest on (a) above at a rate of 15% per annum from 4th November 2019 until full payment.
- d) Payment of interest on (b) above at the rate of 8% per annum from the date of judgment till payment in full.
- e) Payment of the costs of the suit.

It is so ordered.

Dated, signed and delivered by email this 15th day of November, 2023.

Boniface Wamala JUDGE

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