

UGANDA / JUDGMENT

Neebye v Wamala and 2 Others (Civil Suit 492 of 2018) [2024] UGHC 1262 (25 September 2024) [2024] UGHC 1262

COURT

High Court of Uganda

BEFORE

Kaahwa, J

CASE / FILE NUMBER

Civil Suit 492 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

CIVIL SUIT NO. 492 OF 2018

NEEBYE EMMANUEL:.....

VERSUS

1. WAMALA BEN

2. MAGULU GODFREY

3. COMMISSIONER LAND REGISTRATION:.....

JUDGEMENT

BEFORE HON. LADY JUSTICE CHRISTINE KAAHWA

Introduction.

The Plaintiff filed the instant suit jointly and severally against the defendants for among others that he is the owner of land comprised in Kyaggwe Block 255 Plot 69 land at Lusera. He contended that the registration of the 1st and 2nd Defendant on the suit land was perpetuated by fraud, was unlawful and that an order be made directing the 3rd Defendant to cancel the 2nd Defendant's name from the register of the suit land and replace it with the Plaintiff's name.

The Plaintiff had averred that he is the owner and registered proprietor of the suit land having acquired and took possession of the same in 2007 with constructing a permanent house, planted matooke and passion fruits.

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He contended that Owomugisha Peter, who was his biological brother, in 2009 requested that he allows him mortgage the suit land to Global Trust Bank for a loan facility which request he granted. That the loan facility was then acquired by the said Owomugisha Peter and fully repaid but his title was never released to him despite his constant demands which prompted the Plaintiff to do a search of the suit land at the Land Registry only to find that the 1st Defendant had been registered on the same and later transferred it to the 2nd Defendant. The Plaintiff contended that the transactions by the Defendants on the suit land were fraudulent, illegal and unlawful.

On 22nd June, 2022, a consent was executed between the Plaintiff and Owomugisha Peter acknowledging breach of trust and subsequently a consent judgement was entered being payment of Shs. 10,000,000/= (Uganda Shillings Ten million) as general damages and UGX 7,000,000/= (Uganda Shillings Seven Million) as costs of the suit.

On 12th April, 2024 the parties appeared before the Court and informed it of their intention to settle the matter out of Court and indeed a consent was reached where the 1st and 2nd Defendant agreed to transfer the suit land in to the names of the Plaintiff at their own costs for which Court adopted and an order subsequently ensued.

However, the parties failed to agree as to whether in the circumstances of the case the Plaintiff was entitled to general damages and costs of the suit. They left the question to Court which guided that evidence to the damages

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incurred be led. The Plaintiff led his own evidence. This judgment is therefore in relation to only the general damages and costs of the suit.

Issues.

In their submissions, the parties raised 3 issues.

- 1. Whether the Plaintiff is entitled to an order of an award of general damages
- 2. Whether the Plaintiff is entitled to an award of punitive/ exemplary damages.
- 3. Whether the Plaintiff is entitled to an award of costs.

<u>Representation</u>

At the hearing, Ms. Apolot Scholastica appeared for the Plaintiff whereas Mr. Patrick Semakula and Gawera Topher appeared for the 1st and 2nd Defendant. Mr. Twagiramugu Joshua appeared for the 3rd Defendant even though the matter had proceeded ex-parte against it.

Parties were directed to file submissions for which they filed.

Plaintiff's Submissions.

Briefly, the Plaintiff submitted that the 1st and 2nd Defendants procured their registration on his land, the suit land, fraudulently and that when he found out, it subjected him to untold suffering, shock, trauma and pain. He submitted that due to their actions, he was unable to transact on his land for

now 13 years as he could not get credit with it as security. Further, he said the suit subjected him to inconveniences and uncertainty of the fate of his land.

On the issue of punitive damages, the plaintiff submitted that the \$1^{st} and \$2^{nd} Defendants with impunity and fraud transacted on his land well knowing that they had no right to do so which denied him use of his land for which they are liable for punitive damages.

On the issue of costs and interest, counsel submitted that costs follow the event and since the 1st and 2nd Defendants have accepted their guilt as per the matter in Court, then costs should be awarded to him with an interest of 24% per annum from date of award till payment in full on the damages to prevent a delay in payment.

Defendants' submissions.

The Defendants' on the other hand submitted that the rationale behind the award of general damages is to restore as nearly as possible, the Plaintiff, to a position he would have been in if the breach had not occurred. Counsel submitted that the Plaintiff did not concisely demonstrate the position he would have been in had the Defendants not acquired the Certificate of title for the suit land.

Additionally, the defendants argued that the Plaintiff did not demonstrate that the 1st and 2nd Defendant had knowledge or participated in the fraud

perpetuated by Owomugisha Peter on the suit land and that the Plaintiff has not suffered any inconvenience since he has been in the suit land since 2011. On the issue of exemplary damages, the Defendants submitted that their conduct doesn't fall in one that the law envisages subject to exemplary damages. Further, the Defendants submit that the Plaintiff has already been awarded general damages and that adding him more costs would amount to unjustly enrich him.

Decision of the Court

In my view the only issue for determination is on the remedies as the defendants admitted liability and the title was given back to the Plaintiff.

<u>Issue: What remedies are the parties entitled to.</u>

The Plaintiff led evidence on general damages and he submitted that he is also entitled to interest and costs of the suit.

1. General damages

General damages flow from the natural and probable consequence of the wrong complained of. They are normally damages at large and can be nominal or substantial depending on the circumstances of each case. Nominal damages will be awarded where the Court decides in the light of all the facts that no actual damage has been sustained.

These 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. Therefore, the rationale behind general damages is to compensate but not to punish the defendant or enrich the Plaintiff. It is also not meant to punish the plaintiff and let the defendant go without repairing the actual loss he or she caused. In other words, damages are not awarded to enrich a plaintiff far beyond his actual losses nor should the plaintiff get far less than his actual loss. See *Lydia Mugambe v Kayita James & Another* HCCS No. 339 of 2020. The law, implies general damages in every breach of contract and every infringement of a given right. In cases of personal injuries, general damages will include anticipated future loss as well as damages for pain and suffering, inconvenience and loss of amenity. See *Wangala Phillip Vs Steel & Tube Industries LTD* Civil Suit No. \$212/2018.\$

A Court with the discretion to award general damages should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered when assessing general damages.

When a claim for damages is made, the plaintiff is required to provide evidence in support of the claim and to adduce facts upon which the damages could be assessed. Before the assessment of damages can be made, the plaintiff must first furnish evidence to warrant the award of damages.

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The plaintiff should also provide facts that would form the basis of assessment of the damages he would be entitled to. Failure to do so would be fatal to a claim for damages. See *Waiglobe (U) Limited Vs. Sai Beverages Limited* Civil Suit No. 16 Of 2017.

In the instant case, the Plaintiff prayed for general damages of UGX 50,000,000/= (Uganda Shillings fifty million) against each defendant. The plaintiff in justifying his claim, led his own evidence and testified that he had given the certificate of title to the suit Land to his brother, Owomugisha Peter, to acquire a mortgage. He testified that the mortgage was acquired and after its full repayment, he tried to ask his brother to deliver him the said certificate of title in vain. He also testified that he later learnt that his brother had been jailed in Upper Kauga Prison for 2 years and that when he followed up with him about the title, his brother told him that he had given it to a one Wamala Ben, the 1st Defendant, whom he did not know.

He testified that when he followed up the office of the 3rd Defendant (Commissioner Land Registration), he later learnt that the title to the suit land had been transferred to the 1st and then later to the 2nd Defendant without his knowledge and approval. It was his testimony that this subjected him to shock and trauma. Further, he testified that it denied him opportunity to acquire credit with the suit land as security since the title of the land was no longer in his names.

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This Court observes that where there has been a violation such as this, general damages follow the injury alleged. The quantum should therefore be assessed from that conduct or injury.

The Plaintiff in this case stated that he suffered inconvenience of following up the police case, there was inability to for him to borrow and therefore he missed opportunities because his security, being the land title was not available; he feared eviction because the title had been transferred into other people's names and even when the agreement was made to transfer the title back into his names, the defendants dragged their feet for over a year. I award 15 Million as general damages.

Punitive damages.

The Plaintiff, in his amended complaint also prayed for punitive damages of UGX 50,000,000/= against the 1st Defendant. Punitive or exemplary damages are awarded to punish, deter, express outrage of Court at the Defendant's egregious, highhanded, malicious, vindictive, oppressive and/or malicious damage. Punitive damages focus on the Defendant's misconduct and not the injury suffered by the Plaintiff.

Additionally, from the pleadings, I find that the 3rd Defendant was a nominal defendant. A nominal defendant can be described as one who may be joined in a suit not because there is a cause of action against it, but because that party's presence is necessary in order to enable the Court effectively and completely adjudicate upon and settle all the questions involved in the cause

or matter. See Fang Min Vs. Uganda Hui Neng Mining Ltd & Ors MA No. 1096 of 2016.

From the Complaint, it was averred that the 1st Defendant presented false identifications, fictitious person's passport size photographs on the transfer forms and forged the Plaintiff's signature which prompted the 3rd Defendant to transfer the land in to the said Defendant's names and later to the 2nd Defendant.

From the consent on the Court record, these facts have not been disputed. I find that this conduct fits one that should be punished. I therefore order that the 1st and 2nd Defendant be and are hereby penalized in the sum of UGX \$10,000,000/= as punitive damages to the Plaintiff.

The fraud in this case was deliberately executed and the registered owner was deleted off the register without hearing him. The actions of dealing with a person not holding the title was clearly fraudulent and the 4th Defendant should not have allowed a transfer such as this without any document like sale agreement or gift inter vivos.

To that extent the Commissioner Land Registration failed in her duty to ensure that property is not transferred without supporting document. He therefore breached his fiduciary duty in section 3 of the Registration of Titles Act where he has charge and control of the office of land titles. In the circumstances, I therefore find that the laxity exhibited by the Registry of Lands in not doing due diligence before the deletion and transfer into the

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names of another person, is punishable in damages. I award 8 Million as punitive damages

In conclusion I make the following orders;

- 1. The Plaintiff is awarded UGX \$15,000,000/= in general damages against each of the 1st and 2nd Defendants.

- 2. The 1st and 2nd Defendant will pay UGX 10,000,000/= as punitive damages to the Plaintiff.
- 3. The 3rd Defendant shall pay Shs. 8,000,000/= as punitive damages for breach of duty.
- 4. Interest on orders 1, 2 and 3 above is granted at Court rate from the date of transfer of the title until payment in full.
- 5. The taxed costs of the suit shall be borne by the 1st and 2nd Defendant.

Dated and delivered at Mukono this 25th day of September 2024.

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Christine Kaahwa JUDGE

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