

UGANDA / JUDGMENT

Tirupati Development (Uganda) Limited v Uganda Investment Authority (Civil Suit 335 of 2021) [2023] UGHCLD 210 (21 July 2023)

[2023] UGHCLD 210

COURT

HC: Land Division (Uganda)

BEFORE

Nakachwa, J

CASE / FILE NUMBER

Civil Suit 335 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT
MUKONO CIVIL SUIT NO. 335 OF 2021

TIRUPATI DEVEOPMENT (U) LIMITED

VERSUS

UGANDA INVESTMENT AUTHORITY.....

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

JUDGMENT

Background

- 1. The Plaintiff brought this suit against the Defendant for specific performance, declaration that the Plaintiff is the owner of the suit land; permanent injunction; a declaration that the Defendant is in breach of the terms of the lease agreement entered into with the Plaintiff; a consequential order transferring or vesting the suit land into the Plaintiff's name. In the alternative, an order that the Defendant compensates the Plaintiff the current monetary value of the suit land, special and general damages, interest and costs of the suit.
- 2. In 2008, the Plaintiff applied for allocation of land from the Defendant and in 2011 it was granted. The Plaintiff got leases for land comprised in Kyaggwe Block 113 Plots No. A019 and A020 situated at Namanve
- Kiwanga-Mawutu, Nantabulirwa, Goma Division. Mukono

Municipality, Mukono District, measuring approximately 1.5 acres and 10 acres, respectively. By a letter dated 26th June, 2012, the Defendant gave the Plaintiff an invoice of US\$ 22,880 to pay the premium for the land and the Plaintiff accordingly paid.

- 3. Further, through letters dated 28th October, 2010 and 5th January, 2011, the Defendant authorized the Commissioner Land Registration to provide surveying services on behalf of the Plaintiff in respect of two Plots to wit Plots No. A019 and A020 all on Block 113 and the Plaintiff paid land fees for the surveying to be conducted. The Defendant then through a letter dated 17th September, 2012, granted permission to the Plaintiff to take possession of the suit land by fencing and grading it which the Plaintiff did.
- 4. After taking possession of the suit land, the Plaintiff started the process for developing the land by conducting the survey works, obtaining NEMA clearance certificate, obtaining development and building plans which needed certificate of land title before they can be approved. On several occasions, the Plaintiff requested or demanded to be given a land title for it to start developing the land but the Defendant has to date not given the Plaintiff the land title and the Defendant is in the process of allocating the Plaintiff's land to other third parties hence this suit.
- 5. The Defendant neither filed its written statement of defence nor entered physical appearance in court despite effective service of court

process. Proof of service was on court record. Accordingly, this suit proceeded ex-parte.

- 6. During the hearing of this case, the Plaintiff was represented by Counsel Pamba Egan from previously M/s Opwonya & Co. Advocates and later under TRUST Law Advocates. The Plaintiff's counsel filed the Plaintiff's written submissions in this court on 13th December, 2022.

Issues

- (1) Whether the Defendant is in breach of the lease agreement it executed with the Plaintiff;
- (2) Whether there are remedies available to the plaintiff.
- 7. It is trite law that in an action based on alleged breach of contract, the onus is on the plaintiff to adduce sufficient evidence in order to prove on a balance of probabilities that the defendant committed the breach of the terms and conditions of the agreement. In addition, the plaintiff must prove that the breach is connected to the damages he or she alleges he or she suffered to the extent which is significant in law.

- 8. It was submitted for the Plaintiff that in 2008, the Plaintiff and Defendant entered into an agreement for the leases of land comprised in Kyaggwe Block 113 Plots A019 and A020 situated at Namanve-Kiwanga-Mawutu, Nantabulirwa, Goma Division, Mukono District. Counsel defined a contract according to Section 10 (1) of the Contracts Acts 2010 to mean an agreement made with a free consent of parties with the capacity to contract, for a lawful consideration and with a lawful

object, with the intention to be legally bound. Counsel further cited the case of William Kasozi v. DFCU Bank Ltd, High Court Civil Suit No.1326 of 2000, on the prerequisites of a valid contract. The Plaintiff's counsel submitted that when one party to a contract fails to perform his or her obligations or performs them in a way that does not correspond with the agreement, the guilty party is said to be in breach of the contract and the innocent party is entitled to a remedy. (Ronald Kasibante v. Shell Uganda Ltd, HCCS No. 542 of 2006)

- 9. The Plaintiff's counsel contended that in the instant case, the Plaintiff alleges breach of contract on the part of the Defendant. That it was its undisputed evidence that the Defendant undertook to register and process the title for the suit land but it has up to this date failed to fulfil its obligation under the contract. That the lease agreement reflected on page 5 to 12 of the Plaintiff's Trial Bundle was signed by both the Plaintiff and the Defendant which contains 18 clauses to which the parties agreed by signing.
- \$10.\$ Under clause 3 of the lease agreement, the plaintiff was to pay USD: 22,880 to the Defendant which the Plaintiff paid as evidenced by the receipts confirming payment reflected on page 15 and 16 of the Plaintiff's Trial Bundle. Under clause 6(b), the Defendant covenanted to grant to the lessee free of any encumbrances vacant possession of the premises.
- \$11.\$ That in regards to clause 3 of the agreement, the Plaintiff admitted in its plaint that it paid the sum of USD\\$ 22,880 at the

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execution of the agreement and that it went ahead and spent monies on procuring National Environmental Management Authority clearance certificate for environmental impact assessment, fees for the occupational permit and architectural plans with a hope that it was going to embark on the project.

- \$12.\$ Furthermore, that upon taking possession of the land, the Plaintiff started the process of developing the land by conducting the survey works, obtaining National Environmental Management Authority clearance certificate for environmental impact assessment, obtaining development and building plans which needed certificate of title before they could be approved and that on several occasions, the Plaintiff requested to be given a land tittle in order for it to start developing the land to which the Defendant kept a deaf ear.

- \$13.\$ The Plaintiff's counsel further averred that the Plaintiff's evidence stood undisputed by the Defendant and that it is settled that where evidence adduced by a party is not rebutted by the other party, that evidence is deemed accepted. Counsel cited the case of Energo Project v. Kasirye Gwanga, HCMA No. 558 of 2009. The Plaintiff's counsel concluded that in the absence of any other evidence to the contrary, there is no doubt that the Defendant is in breach of its obligation under the lease agreement of the suit property. Counsel prayed that this honourable court resolves the 1st issue in the affirmative

\$14.\$ Leasehold is one of the land tenure systems in which land may be owned in Uganda as stipulated under Article 237 (3) of the Constitution of the Republic of Uganda, 1995 and Section 2 of the Land Act, Cap. 227 as amended. Article 237 (3) of the Constitution states as follows:

"Land ownership.

Land in Uganda shall be owned in accordance with the following land tenure systems—

- (a) customary:
- (b) freehold:
- (c) mailo; and
- (d) leasehold."

Section 2 of the Land Act, Cap. 227 as amended also provides that: "Land ownership.

Subject to Article 237 of the Constitution, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the following land tenure systems— (a) customary:

- (b) freehold:
- (c) mailo; and
- (d) leasehold."

\$15\$ Under Section 3 (5) (a) of the Land Act, a lease can either be created by contract or by operation of the law, and for a contract of a lease to be valid, there must be a final agreement on the terms of the lease agreement, that is, on the parties, the property, the consideration or rent, the commencement and the period of the lease and any other special terms.

\$16\$ According to section 101 of the Registration of Titles Act, Cap. 230, the registered proprietor of a freehold or mailo land is at liberty to lease out such land. It provides thus.

"101. Leases of land

The proprietor of any freehold or mailo land under the operation of this Act may, subject to any law or agreement for the time being in force, lease that land for any term exceeding three years by signing a lease of it in the form in the Eighth Schedule to this Act; but no lease subject to a mortgage shall be valid or binding against the mortgagee unless he or she has consented in writing to the lease prior to it being registered."

Similarly, section 54 of the Registration of Titles Act (*ibid*), provides for registration of any lease granted.

\$17\$ A lease agreement is governed by the same principles as a contract under the Contracts Act, 2010. Section 10 of the Act provides that:

"10. Agreement that amounts to a contract.

- (1) A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound."

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Clearly from the above provisions, parties are free to contract, but shall be bound by the terms of their contract.

- 18 In the instant case, the Plaintiff's evidence, as well as the documents contained its trial bundle, show that the Plaintiff and the Defendant executed a lease agreement in respect of the suit land and this is evident from page 5-12 of the Plaintiff's trial bundle where the said lease agreement appears.
- P. W.1 who is the Director of the Plaintiff's company further gave 19. evidence that in the year 2008, the Plaintiff applied for allocation of land from the Defendant and thereafter a lease agreement was executed between the Plaintiff Company and the Defendant in respect of the suit land. He testified that the Defendant gave the Plaintiff an invoice of USD 22,880 and a go ahead to pay the premium for the aforesaid land and the Plaintiff accordingly paid.
- \$20.\$ He further testified that vide letters dated 28th October, 2010 and 5th January, 2011, the Defendant authorized the Commissioner Land Registration to provide surveying services on behalf of the Plaintiff in respect of the two plots to wit Plots No. A019 and A020 all on Block 113 and the Plaintiff paid land fees for the surveying to be conducted. That through a letter dated 17th September, 2012, the Defendant granted permission to the Plaintiff to take possession of the suit land by fencing and grading it. The Plaintiff did so.

\$21. P. W.1 further testified that upon taking possession of the suit land, the Plaintiff started the process of developing it by conducting the survey works, obtaining NEMA clearance certificate, obtaining development and building plans which required a certificate of land title before they can be approved. He said that on several occasions, the Plaintiff requested to be given a land title for it to start developing the suit land but the Defendant has not given the Plaintiff the land title, to date.

P. W.1 added that the Plaintiff went ahead and procured a NEMA 22. certificate and paid a total of UGX. 7,000,000/=. That the Plaintiff also procured architectural plans for the intended project. And that the Defendant well aware of the preceding developments on the suit land has in bad faith refused to give the Plaintiff land titles with the intention of unlawfully and illegally taking away the Plaintiff's land and allocating it to third parties.

\$23 P. W.1 further testified that the Defendant has on different occasions since 2014 without any colour of right denied the Plaintiff access to the suit land and has instructed its agents/servants not to allow the Plaintiffs access to the suit land. That because of the Defendant's actions, the Plaintiff's efforts to develop and construct on the suit land have remained futile and hindered. P. W.1 added that due to the Defendant's actions, the Plaintiff has lost business, money it has invested in developing the suit land from grading, fencing off the land and pouring building materials. It has suffered huge inconvenience and

lost a lot of money in projected income earning in case the construction had gone on as planned.

24. In *United Building Services Ltd v. Yafesi Muzira T/A Quickset Builders and Co.* HCCS No.154 OF 2005, Justice Lameck N. Mukasa held that

> "A breach of the contract occurs when one or both parties fail to fulfil the obligations imposed by the terms of the contract."

- \$25. In the present case, the evidence adduced especially the correspondences from the Defendant to the Plaintiff clearly show that the lease agreement was concluded in or around 2011/2012 and the Plaintiff was given a go ahead to develop the suit land. For instance, the letter from the Defendant dated 26th June, 2012 at page 13 of the trial bundle to which an invoice was attached thereto at page 14 required the Plaintiff to pay for the suit land and the letter dated 17th September, 2012 (at page 20 of the Plaintiff's trial bundle), required the Plaintiff to fence off and grade its land immediately at least by 31st October, 2012 without fail. This was done by the plaintiff according to the attachments.
- \$26 The evidence on record further shows that the Plaintiff requested for the land title in order to register its lease hold title but to-date it has not been handed over by the Defendant. This has frustrated its continuance to develop and use the suit land for its business or investment.

- The Defendant's refusal to handover the land title to the Plaintiff \$27.\$ to enable it have its name registered as the lease hold owner of the land and later withdrawing the Plaintiff's possession of the suit land, in essence means the Defendant defaulted in fulfilling its obligation under the lease agreement to give vacant possession of the said land to the Plaintiff as it was required to do at page 6 of the agreement under Clause 6 (b). This failure has deprived the Plaintiff of its leasehold ownership of the suit land and thus putting the Plaintiff's activities on the suit land at a stand-still.
- 28. This court summoned the Commissioner Land Registration to give a current proprietorship status of the suit land. On 23rd March, 2023, Joshua Twagiramungu testified and later submitted a letter dated 30th February, 2023 from the Commissioner Land Registration clarifying the current status of the suit land. According to the said letter addressed to court, the suit land is now registered as Kyaggwe Block 113 Plots 3695, 3736 in the names of Creston Properties Limited of P. O. Box 901, Kampala. Furthermore, an initial lease agreement was signed between Uganda Investment Authority and Creston Properties Limited on 22/8/2014 and a 49 lease agreement signed on 26th June, 2020
- On the 23rd day of March, 2023, this court visited the locus in quo 29. and found that the suit land was being developed by Creston Properties Limited and the land was cordoned off using corrugated iron sheets. Old stumps with the names of the Plaintiff could be seen. PW1

confirmed that the fence passed on those poles which were removed by the new developers.

In my judgment, the Defendant's action clearly amounts to \$30.\$ breach of contract to which the Defendant must be held liable. The Plaintiff has proved to the satisfaction of the court that it validly entered into a lease agreement with the Defendant which has been breached by the Defendant. The land was re-allocated to Creston Properties Limited which took possession and is constructing buildings on the land

Issue₂

Whether there are remedies available to the plaintiff.

\$31.\$ The Plaintiff sought for an order of specific performance compelling the Defendant to hand over or give certificates of title plus duly signed transfer forms to the Plaintiff for land comprised in Kyaggwe Block 113, Plots No. A019 and A020 situated at Namanve-Kiwanga-Mawutu, Nantabulirwa, Goma Division, Mukono Municipality, Mukono District; a declaration that the Plaintiff is the rightful owner of the suit land comprised in Kyaggwe Block 113, Plots No. A019 and A020 situated at Namave-Kiwanga-Mawutu, Nantabulirwa, Goma Division, Mukono Municipality, Mukono District; a permanent injunction restraining the Defendants, their servants, agents, employees, transferees or any other person or body who may be claiming or acting under their instructions from selling, transferring or carrying out any forms of transaction or trespassing on

land comprised in Kyaggwe

Block 113, Plots No. A019 situated at Namanve-Kiwanga-Mawutu, Nantabulirwa, Goma Division, Mukono Municipality, Mukono District.

32. The Plaintiff further prayed for an order of a permanent injunction restraining the Defendants, their servants, agents, employees, transferees or any other person or body who may be claiming or acting under their instructions from withdrawing the land comprised in Kyaggwe Block 113, Plots No. A019 situated at Namanve-Kiwanga-Mawutu, Nantabulirwa, Goma Division, Mukono Municipality, Mukono District, a declaration that the Defendant is acting in breach of the terms of the lease agreement entered into with the Plaintiff, a consequential order be made transferring or vesting the demised land comprised in Kyaggwe Block 113 Plot No. A019 situated at Namanve-Kiwanga- Mawutu, Nantabulirwa, Goma Division, Mukono Municipality, Mukono District. That in the alternative, the Plaintiff prayed for an order that the Defendant compensates it the current monetary value of the land, special damages, interest at court rate from the date of filing this suit, costs of the suit and any other reliefs as the court may deem fit and just.
33. The Plaintiff's counsel contended for the prayer of specific performance that, the Plaintiff has demonstrated with uncontroverted evidence that it fulfilled all the conditions of the lease agreement only to be denied a certificate of title in respect of the suit property by the Defendant. Learned counsel prayed that this court grants an order compelling the Defendant to fulfil its part of the bargain by ordering it to hand over or give certificates of title plus duly signed

transfer forms to the Plaintiff for land comprised in Kyaggwe Block, 113 Plots No. A019 and A020 situated at Namanve-Kiwanga- Mawutu, Nantabulirwa, Goma Division Mukono Municipality, Mukono District.

- 34 For declaration of ownership of the suit land, the Plaintiff's counsel argued that, the Defendant requested the Plaintiff to pay the premium for the suit land which the Plaintiff duly paid as reflected by the receipts of payment on pages 15 and 16 of the Plaintiff's Trial Bundle. That the Defendant went ahead to give directives to the Commissioner, Surveys and Mapping to survey the suit land in its letter dated 5th January, 2011 as well as giving the Plaintiff the authority to fence off the land which the Plaintiff did.
- 35. That the Plaintiff went ahead to produce the National Environmental Management Authority clearance certificate for environmental impact assessment and payed land fees as reflected by paragraphs 5, 7 and 8 of the Witness Statement of Miraj Barot. That to the Plaintiff's dismay, the Defendant has up to this date refused to issue to the Plaintiff a certificate of title despite endless requests for the same by the Plaintiff.

36. Counsel asserted that the principle established by decided cases is that a party who does not enter appearance and file a written statement of defence is deemed to have admitted the allegations in the plaint. Counsel prayed that this court finds that the Plaintiff is the rightful and lawful owner of the land comprised in Kyaggwe Block 113, Plots Nos A019 and A020 situated at Namanve-

Kiwanga-Mawutu, Nantabulirwa, Goma Division, Mukono Municipality, Mukono District

37. That as to general damages, the Plaintiff's counsel cited a number of cases and argued that as a general rule, a breach of contract entitles the injured party to an award of general damages. That the damages available for breach of contract are measured in a similar way as a loss due to personal injury. The Plaintiff's learned counsel averred that the fundamental principle by courts are guided in awarding damages is restitution and that this principle is meant that the law will endeavour so far as money can do it, to place the injured person in the same situation as if the contract had been performed or in the position he occupied before the occurrence of the tort both in cases arising in contract and in tort, only such damages are recoverable as arise naturally and directly from the act complained of.
38. It was argued for the Plaintiff that in the present case, by making payment of premium as agreed, and failing to get vacant possession or the refund for the consideration, the Plaintiff suffered general inconvenience and that the money is being held by the Defendant up to date. Further, that due to the Defendant's actions, the Plaintiff has lost business, the money it has invested in developing the suit land from grading, fencing off the land and pouring building materials. That it has suffered huge inconvenience and lost a lot of money in projected income earning in case the construction had gone on as planned. Counsel added that the witness attached a tabulated form to substantiate more on the losses it has suffered. That annexure

"O" to the witness statement of Miraj Barot will guide this honourable court in arriving at the figure to award to the Plaintiff in general damages. But the plaintiff prays for UGX: 2,153,361,066 in general damages.

- 39. The Plaintiff sought to recover interest on both the special damages and general damages from the date of filing this suit till payment in full. That under section 26 (2) of the Civil Procedure Act, court has powers to award interest if not agreed upon and that the principle has been confirmed by decided cases where it is stated that where no interest rate is provided, the rate is fixed at the discretion of the trial judge. Counsel prayed that this court exercises its discretion to award interest on the general damages, taking into account that this was a commercial transaction and that the Defendant had held the Plaintiff's money since 2012 when the agreement was finalized.

- \$40\$ Relying on Section 27 of Civil Procedure Act, Cap. 71, the Plaintiff's counsel prayed that this `honourable court be pleased to award costs to the Plaintiff and that this section provides that costs always follow the event. Counsel further relied on the case of Kamugisha v. Uganda Revenue Authority, HCCS No 311 of 2011.
- 41 The aftermath of breach of contract vary, depending on the seriousness of the breach and also depending on how the innocent party decides to react towards the breach. In this case, the Plaintiff being the innocent party sought for the above remedies.

42 The remedy of specific performance is provided for under section 64 (1) of the Contract Act, 2010, which states thus:

(1) Where a party to a contract, is in breach, the other" party may obtain an order of court requiring the party in breach to specifically perform his or her promise under the contract."

43. Section 64 (2) of the Contracts Act, 2010 states that:

> "A party is not entitled to specific performance of a contract where:

- (a) it is not possible for a person against whom a claim is made, to perform the contract.
- (b) the specific performance will produce hardships which would not have resulted if there was no specific performance.
- (c) the rights of a third party acquired in good faith would be infringed by the specific performance.
- (d) specific performance would occasion hardship to a person against who a claim is made, out of proportion to the benefit likely to be gained by the claimant:
- (e) the person against whom the claim is made is at the time entitled, although in breach, to terminate the contract: or
- *(f) the claimant committed a fundamental breach of* his or her obligations under the contract, but in cases where the breach is not fundamental,

specific performance is available to him or her subject to his or her paying compensation for the breach "

\$44.\$ From the evidence on record, the Defendant is in breach of Clause 6 (b) of the lease agreement which covenants it to give vacant possession to the Plaintiff. In my judgment, handing over certificate of title and signing transfer forms to allow the Plaintiff register as a lease hold owner of the suit land is part of giving vacant possession. The Plaintiff contended that it has at all times performed its part of the contract as required but the Defendant has failed in its obligation, hence praying for an order of specific performance.

\$45\$ In Halsbury's Laws of England, 4th Edition paragraph 801 at page 460 the law is stated thus:

> "The remedy by specific performance. Specific performance is equitable relief, given by the court to enforce against a defendant the duty of doing what he agreed by contract to do; a plaintiff may, therefore, obtain judgment for specific performance even though there has not, in the strict sense, been any default by the defendant before the issue of the writ.

> In early times a court of equity assumed jurisdiction to compel a party to a contract to perform his part of the contract when damages recoverable at law were not an adequate remedy. The remedy of specific performance is thus in contrast with the remedy by way of damages for breach of contract, which gives pecuniary compensation for failure to carry out terms of the contract. The remedy is special and extraordinary in its character, and the court has a discretion either to grant it or leave the parties to their rights at law. The discretion, however, is not an arbitrary or capricious one; it is to be exercised on fixed principles in accordance with the previous authorities. The judge must exercise his discretion in a judicial manner. If the contract is within the category of contracts of which specific performance will be granted, is valid in form, has been made between competent parties and is unobjectionable in its nature and circumstances, specific performance is in effect granted as a matter of course, even though the judge may think it is very favourable to one party and unfavourable to the other, unless the defendant can rely on one of the recognized equitable defences. Where such a defence is available, the existence of a valid contract is not in itself enough to bring about the interference of the court. The conduct of the plaintiff, such as delay, acquiescence, breach on his part, or some other circumstance outside the contract, may render it inequitable to enforce it, or the contract itself may, for example on the ground of misdescription, be such that the court will refuse to enforce it."

46 In the instant case, the evidence on court record and the locus visit indicate that the two plots of land were allocated to another developer (Creston Properties Limited) by the Defendant and the land registered in that developer's name. The new owner has put up extensive developments on the suit land. Therefore, in my judgment,

the remedy of specific performance is inappropriate in the instant case. As stated under section 64 (2) (a) of the Contracts Act, 2010 a party is not entitled to specific performance of a contract where it is not possible for a person against whom a claim is made, to perform the contract. In this case, the Defendant cannot perform the contract. In my view, an award of damages would suffice.

47 In *Uganda Revenue Authority v. Wanume David Kitamirike* [2012] 1 U. L. R. 219, at page 233 - 234 Justice Kasule, JA held as follows:

> "General damages are awarded by court at large and after court assessment. They are compensatory in nature in that they should offer some satisfaction to the injured plaintiff. Punitive or exemplary damages are an exception to the rule that damages generally are to compensate the injured person. These are awarded to punish, deter, express outrage of court at the defendant's egregious, highhanded, malicious, vindictive, oppressive and /or malicious conduct. They are also awarded for the improper interference by public officials with the rights

of ordinary citizens. Unlike general and aggravated damages, punitive damages focus on the defendant's misconduct and not the injury or loss suffered by the plaintiff. They are in the nature of a fine to appease the victim and discourage revenge and to warn society that similar conduct will be an affront to society's and also the court's sense of decency. They may also be

awarded to prevent unjust enrichment. They are awarded with restraint and in exceptional cases because punishment, ought as much as possible to be confined to criminal law and not the civil law of tort and contract."

48 The settled position of the law is that the award of general damages is in the discretion of court, and is always as the law will presume to be the natural consequence of the Defendant's act or omission. In *Assist (U) Ltd. v. Italian Asphalt and Haulage & Anor*, HCCS No. 1291 of 1999 at 35 Justice Geoffrey Kiryabwire held that;

"the consequences could be loss of profit, physical, inconvenience, mental distress, pain and suffering".

49. However, the discretion must be exercised judicially taking into account all circumstances of the case. A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had she or he not suffered the wrong. In *Haji Asuman Mutekanga v. Equator Growers (U) Ltd.* SCCA NO. 7 of 1995, Oder JSC (as he then was), held thus:

> "With regard to proof, general damages in a breach of contract are what a court (or jury) may award when the court cannot point out any measure by which they are to be assessed, except in the opinion and judgment of a reasonable man."

\$50\$ The Plaintiff concluded the lease agreement with the Defendant for the suit land in 2012 upon making payment for it upon a written demand by the Defendant. It is now close to 10 years and the Defendant has not honored the part of the contract by giving vacant possession to the Plaintiff. No doubt, the Plaintiff being an investor must have been greatly inconvenienced by the Defendant's action. In the circumstances of this case, this court finds an award of general damages of UGX. 60,000,000/= with an annual interest of 6% from the date of judgment until payment in full, to the Plaintiff to be a fair and adequate compensation.

\$51\$ In *Kyamabadde v. Mpigi District Administration* [1983] HCB 44 it was held that special damages must be strictly proved but they need not be supported by documentary evidence in all cases. PW1 testified that the Plaintiff paid US \$ 22,880 to the Defendant as money in compliance with the lease agreement and UGX 7,000,000 to NEMA for environment impact assessment. There is proof of payment of the above sums which must be refunded by the Defendant.

52. On an award of costs, section 27 (1) of the Civil Procedure Act, Cap. 71 provides that:

> "Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent

those costs are to be paid, and to give all necessary directions for the purposes aforesaid."

- \$53. In the instant case, the Plaintiff being the successful party is entitled to the costs of the suit. Having found both issues in the Plaintiff's favour, judgment is hereby entered for the Plaintiff and I hold that the Defendant is in breach of the lease agreement between it and the Plaintiff. This court therefore orders that the defendant:
- (a) pays US \$ 22,880 to the plaintiff as money paid in compliance with the lease agreement;
- (b) pays UGX 7,000,000 to the plaintiff as money paid to NEMA for environment impact assessment;
- (c) pay general damages of UGX.60,000,000/= awarded to the Plaintiff;
- (d) the interest of 6% per annum on the items in (a), (b) and (c) awarded to the Plaintiff from the date of judgment until payment in full;
- (e) costs of the suit awarded to the Plaintiff.

I so order accordingly.

This judgment is delivered this by

In the presence of:

- (1) Counsel Pamba Egan from M/s TRUST Law Advocates, for the Plaintiff;
- (2) Ms. Pauline Nakavuma, the Court Clerk.

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