

**Uganda Rural Development and Training
(URDT)
and Another v Kimarakwija (Civil Appeal 15 of
2023) [2023] UGHC 150 (30 October 2023)**
[2023] UGHC 150

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the 1st Defendant and Another for an order for release of the plaintiff's goats which were confiscated by the defendants on the allegation that they had strayed into the defendant's gardens, and for an order of special damages of Shs.6,000,000/= being the price and valued of the goats in the event the goats or any of them is not existing at the time the suit is concluded.

- [3] During conferencing by the parties, the 2 suits were consolidated and it was agreed that the 2 suits be tried under C. S No.014/2013 where Mugisa Kimarakiwija is the plaintiff and URDT and Kajungu Syrus are defendants. At the commission of the trial in the lower court, judgment was entered in favour of the plaintiff with orders that the 1st Defendant compensates the Plaintiff for his 15 goats at a value of Ugx 350,000/= each, totalling to Ugx 5,250,000/=. Special damages of Ugx 4,000,000/= and General damages of Ugx 4,000,000/= with costs of the suit.
- [4] The 1st Defendant/Appellant was dissatisfied with the judgment and orders of the trial Magistrate and as a result, lodged the present appeal on the following grounds of appeal.
- *1. The Learned Trial Magistrate erred in law and fact when he failed to consider the first Appellant's counter claim and arrived at a wrong decision.*
- *2. The Learned Trial Magistrate erred in law and fact when he failed to consider the evidence of Defence Witness No.3, Agaba Moses and ended up arriving at a wrong decision.*
- *3. The Learned Trial Magistrate erred in law and fact when he awarded special and general damages without any proof of such damage by the Respondent.*
- *4. The Learned Trial Magistrate erred in law and fact when he failed to find out that the Respondent's goats had trespassed and destroyed crops.*

Counsel legal representation

- [5] The Appellant was represented by Mr. Isaac Mwebaze of M/s Aequitas Advocates, Kampala while the Respondent was represented by Mr. James Byamukama of M/s Byamukama, Kaboneka & Co. Advocates, Kampala. Both counsel filed their respective submissions for consideration of this court in the determination of this appeal.

The Duty of the 1st Appellate court

- [6] This is a first appeal from the decision of the learned trial Magistrate Grade 1, Hoima Chief Magistrate's court seated at Kagadi. The duty of the 1st Appellate court was outlined in the case of Sanyu Lwanga Musoke Vs Galiwango, SCCA. No.48/1995 as follows:

"...It is settled law that a first Appellate court is under the duty to subject the entire evidence on the record to an exhaustive scrutiny and re-evaluate and make its own conclusion while bearing in mind the fact that the court never observed the witnesses under cross examination so as to test their veracity."

- [7] This court therefore has the legal duty to rehear the case by reconsidering all materials as presented before the trial Magistrate and make its own conclusion so as to avoid any miscarriage of justice, see also Milly Masembe Vs SCOUL, SCCA No.1/2000.

Preliminary objection

- [8] In his submissions, counsel for the Respondent raised a preliminary point of objection which is as follows:

a) Appeal filed out of time

That the appeal is incompetent, illegal and a nullity having been filed out of time without leave of court C/ss 79(1)(a) and 96 CPA. That in the instant case, judgment in issue was delivered on 15/12/2016 in the presence of both the Defendant/Appellant and Plaintiff/Respondent's lawyers but the memorandum of appeal was lodged in the High Court on 5/4/2017 by the Appellant's counsel, nearly 4 months after delivery of judgment and therefore out of time. He contended that there is therefore no valid appeal before court and the alleged appeal should in the premises be dismissed with costs for being incompetent.

- [9] Counsel for the Respondent submitted in rejoinder that the present appeal is properly before court. That upon delivery of the judgment on the 15/12/2016, the Appellant through its then lawyers M/s Ssetimba & Co. Advocates, lodged a notice of appeal on the 21/12/2016 to notify court of its intention to lodge an appeal upon being availed a record of proceedings which he obtained towards the end of March 2017 and as a result, time (the 30 days) spelt under S.79(1) CPA elapsed. However, that under S.79(2) CPA, time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded have to be excluded when computing the period of limitation.

- [10] The above being a preliminary objection, this court is obliged to first dispose it off.

According to O.43 r. 1 CPR,

"Every appeal to the High court shall be preferred in the form of a memorandum signed by the Appellant or his or her advocate and presented to the court or such offices as it shall appoint for the purpose."*

- Then, S.79 CPA provides thus,
- *"1. Except as otherwise specifically provided in any other law, every appeal shall be entered,*
- *(a) Within thirty days of the date of the decree or order of the court;...*
- *2. In computing the period of limitation prescribed by this section, the time taken by court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded."*

- [11] In the instant case, the judgment of the lower court was delivered on the 15/12/2016 in the presence of the Plaintiff/Respondent and both advocates for the parties. On the 22/12/2016, the Appellant being dissatisfied with the decision of the trial Magistrate, filed a Notice of Appeal to the High Court with a copy to the trial court. The Memorandum of Appeal dated 4/4/2017 was filed on the 5/4/2017, more than 3 months from the date of delivery of the judgment.

Though the judgment of the trial Magistrate and the record of the lower court appear to have been duly certified, there is no evidence as to when the certification was done and whether a certificate was accordingly issued to the parties to that effect. It is therefore not clear as to when the record and the judgment were certified so as to provide a clue as to when the record was ready for collection of the parties, in particular the Appellant and the counsel.

- [12] According to authorities; *Tight Security Ltd Vs Chartis (U) Insurance Co. Ltd*, HCCA No.14/2014, Justice Madrama cited *Hajji Mohammed Nyanzi Onyango & Ors Vs J. Hannington Wasswa & Anor*, HCCA No.37 of 1985 these are for the proposition that the record of proceedings will only be prepared upon the application of the intending Appellant. It would be illogical for the court to hurry and prepare a record of proceedings if there is no intention to appeal against the judgment and decree.
- [13] In this case however, on record, there is a letter dated 20/12/2016 that was written by the then counsel for the intending Appellant seeking for a typed and certified proceedings and judgment to enable the preparation of the memorandum of Appeal. It was written within the time to appeal, copied to the opposite counsel and it has not been contested in any way by the Respondent.
 - [14] 2ndly, it is counsel for the Appellant's contention in his submissions in rejoinder that he was availed a copy of the judgment and record of proceedings towards the end of March 2017, though he does not specify the exact date he was availed the record. It is an agreed position of the law that not until such time when the trial court has availed the intending Appellant with a record of proceedings can the Appellant prepare its memorandum of appeal and the 30 days rule starts applying from the time the Appellant is availed with such record to enable it prepare the grounds of Appeal; *Yokosofati Muwonge Vs Godfrey Matovu Salongo*, HCCA No.98/2018 and *Nawemba Suleiman Vs Byekwaso Maganda* [1989] HCB 140.
 - [15] The burden is on the Respondent to prove that the appeal is incompetent. That when the Appellant applied for a certified copy of the proceedings and judgment, the court did prepare and certify the proceedings and judgment requested for, thus making them ready for collection by the Appellant and that he filed the appeal after the lapse of 30 days from the date the proceedings were ready for his collection but had failed to collect them. I find that the Respondent has not discharged this onus.

- [16] Instead, I find that there is no evidence on record of the appeal that the trial court prepared and availed certified copies of the proceedings to the Appellant in time to enable him lodge the memorandum of appeal and the time for lodging the memorandum of appeal can only be reckoned after the trial court has availed certified copies of the proceedings and judgment to the Appellant as requested for. In the premises, I overrule the preliminary objection and proceed to entertain the appeal on its merit.

Resolution of the grounds of Appeal

Ground 1 & 4: (a) The learned trial Magistrate erred in law and fact when he failed to consider the 1st Appellant's counterclaim and arrived at a wrong decision.

- (b) The learned trial Magistrate erred in law and fact when he failed to find out that the Respondent's goats trespassed on the 1st Appellant's gardens and destroyed crops.
- [17] Counsel for the Appellant submitted that the trial Magistrate disregarded the defendant/Appellant's counter claim touching the crops that were destroyed by the goats in question thus reaching an unjust decision. That though the issue of Whether the plaintiff's goats trespassed or not was framed, was never answered by the trial Magistrate as the same was avoided and instead of evaluating the available evidence in agreement with the framed issue, the trial Magistrate instead found in his judgment that the plaintiff incurred a big loss as opposed to the issue for resolution, thus occasioned a miscarriage of justice to the Appellant.
- [18] Counsel for the Respondent on the other hand submitted as found by the trial Magistrate that the Plaintiff/Respondent's goats entered the 1st Defendant/Appellant's garden and were impounded by the 2nd Defendant/Appellant, who was employed by the 1st Defendant/Appellant as a manager of his farm/garden. That in spite of the demands for the release of the goats by Plaintiff/Respondent, the Defendants/Appellants did not release the goats to the owner. That the Appellants instead kept the goats in their personal custody until they were all "pronounced dead." Counsel contended that in spite of the initial trespass, the Defendants/Appellants unlawfully detained the goats without recourse to the law by having the matter managed by the authorities and the goats eventually died in the Appellant's custody under unclear circumstances.
- [19] As regards the alleged error by the trial Magistrate not canvassing the counter claim, counsel concluded that this was a result of the parties themselves framing issues for determination and omitting to include it. That however, be that as it may, the 2nd Defendant/Appellant, the farm manager of the 1st Defendant/Appellant and the one who actually impounded the goats, in his defence (WSD) denied that the goats caused any damage thus his defence disposed off the counter claim as being baseless.

- [20] I find that indeed, the 1st Defendant/Appellant counter claimed against the Plaintiff/Respondent for recovery of general damages for trespass, payment of shs.6,665,840/= as the value of the destroyed crops , special damages of shs.600,000/= and costs of the suit.
- [21] During scheduling the 1st issue was "Whether the plaintiff's goats trespassed on the defendant's farm." In my view, this issue sufficiently canvassed the counter claim and therefore, it is not correct as counsel for the Respondent submitted, that the framed issues for determination did not include such counter claim. In addition, Kilama Wilberforce (DW1) who testified for the defendants/Appellants testified of how goats destroyed crops and were impounded by the farm manager, the 2nd Defendant/Appellant. It was his further evidence that an Agriculture officer, a one Bahindura John (DW2) was consulted and he came and assessed the damage of the crops to the tune of shs. 6,000,000/= plus. That later, one by one, all the 15 goats died because the owner, the Plaintiff/Respondent failed and or refused to come and have the matter sorted out and or collect them.
- [22] However, though the said 2nd Defendant/Appellant never adduced any evidence in court, in his WSD dated 4/6/2013, he pleaded under paragraph 3 as follows:
 - > That he is a veterinary doctor who has worked for the 1st defendant as a farm manager and doctor. That as a farm manager and doctor, he was in charge of the 1st defendant's farm and livestock, crop husbandry and workers and that he impounded the plaintiff's goats before they entered into the 1st defendant's gardens and therefore, they did not cause any damage to the said gardens.
- [23] The trial Magistrate on his part, as regards the counter claim, he stated thus:

"On the counter claim to succeed, there must be a better cause of action by the defendant and in good faith to counter the plaintiff's cause of action."
- [24] In his conclusion, the trial Magistrate found that the defendant did not have a better cause of action to counter the plaintiff's cause of action and as a result, found in favour of the Plaintiff. It cannot therefore be said that the trial Magistrate did not consider the counter claim in his judgment. I find that the trial Magistrate did consider the counter claim in his judgment though he omitted to directly and specifically make a finding and determine the framed issue of Whether the Plaintiff's goats trespassed on the defendant's farm. However, in view of the fact that the 2nd Defendant/Appellant, Kajungu Syrus, who was the farm manager and the one who was actively involved in impounding the goats and in charge of the gardens, pleaded in his WSD that the said goats did neither enter the gardens nor cause any damage to the crops, in the absence of any other evidence to the contrary, the issue of whether the plaintiff's goats trespassed on the 1st defendant's gardens was determined at pleading level.
- [25] As I observed in Monica Birungi & 3 Ors Vs Kusemererwa Grace & 2 Ors, HCCA No.74/2014 relying on Jani Properties Ltd Vs Dares Salaam City Council [1966] EA 281, and Struggle (U) Ltd Vs Pan-African Insurance Co. Ltd [1990] ALR 46-67,

"Parties in civil matters are bound by what they say in their pleadings which have the potential of forming the record and moreover, the court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them."

[26] In this case, I find that the pleadings of the 2nd defendant/Appellant disposed off the issue of Whether the plaintiff's goats trespassed on the 1 st Defendant/Appellant's gardens. The goats did neither enter the gardens nor destroy any crops. The evidence of Bahindura John (DW2) who purportedly assessed the alleged damaged crops did not lead any

evidence as regards his expertise in assessment of damage to crops. Being a mere staff of Production department of Agriculture at the District as he testified in court, did not render him a Senior Agricultural Officer as he misrepresented himself to be in his report (D. Exh.1). He did not present his credentials to show that he is what he professed to be. As a result, I find his evidence not credible at all and no wonder, it is inconsistent with the pleadings of the 2nd defendant/Appellant who testified that no crops were damaged or destroyed at all. As a result of the foregoing, as counsel for the Respondent rightly submitted, the evidence of DW3 and his crop damage assessment report in support of the counter claim must be false. If not, the crops were destroyed by other animals but not definitely those of the Plaintiff/Respondent.

- [27] In the premises, I find that though the trial Magistrate did not make any finding on the 1st issue of Whether the Plaintiff's goats trespassed on the 1 st Defendant's gardens and therefore omitted to determine the issue, the omission did not occasion any miscarriage of justice to the Appellants.
- [28] As a result of the above, I find both grounds 1 and 4 devoid of any merit. They accordingly fail.

Ground 2: The learned trial Magistrate erred in law and fact when he failed to consider the evidence of Defence witness No.3 Agaba Moses and ended up arriving at a wrong decision.

[29] The perusal of the evidence of Agaba Moses (DW3) is briefly to the effect that he was the L. C1 chairperson, who in 2013, the farm manager of the 1st Defendant/Appellant requested to lead him to the home of the Plaintiff/Respondent. That he called the Plaintiff/Respondent on phone to come so that they sort out the issue of his goats having destroyed crops. DW3 however, appeared a very unreliable witness because of the inconsistency in his evidence. For example, he stated,

"I saw the garden." In the same breath he retorted, *" I did not reach the garden."* Then he at the same time claim, *"I saw some beans destroyed and maize that day and I left them to solve their matter and I left..."*

- [30] Surely, no sane trial court would bother with the evidence of such a witness. As a Local leader, with this kind of mentality of "I don't care attitude" towards the people he is leading renders his integrity questionable and therefore, his evidence very unreliable. No wonder the trial Magistrate indeed did not bother to consider his evidence though he did not make any comment about his evidence. I would equally not take into account such evidence of DW3 basically because it lacks credibility.
- [31] In the premises, I find that the trial Magistrate's failure to consider the evidence of Agaba Moses (DW3) did not occasion any miscarriage of justice to the Appellant since the evidence was inconsistent and contradictory in itself and therefore unreliable. It pointed to deliberate lies. This ground of appeal therefore fails.

Ground 3: The learned trial Magistrate erred in law and fact when he awarded special and general damages without proof of such damage by the Respondent.

- [32] In the 1st instance, counsel for the Appellant mixed up and confused the Plaintiff/Respondent's claim for his 15 goats and or compensation for the goats when the Plaintiff/Respondent referred to the value of the goats as "special damages". Whether he was right or wrong to refer to that claim as "special damages" or not, what is apparently clear is that the Plaintiff/Respondent in his plaint was claiming for recovery of his goats that were "confiscated" by the Defendants/Appellants or their value in case the goats were not in existence. In this case, it later transpired that all the goats died in the hands of the Defendants/Appellants. As a result, in my view, the Plaintiff would definitely be entitled to compensation of the goats.

Order for compensation

- [33] Counsel for the Appellant submitted that the 2nd Defendant/Appellant never attended court throughout the hearing and that therefore, there is no evidence that he was an employee of the 1st Defendant/Appellant so as to render him liable for damages and or compensation for the Plaintiff/Respondent's goats that perished in the hands of the Defendants/Appellants upon their confiscation.
- [34] I however find overwhelming evidence on record by Kilama Wilberforce (DW1), the Auditor of the 1st Defendant/Appellant and the sole witness who testified for the 1st Defendant/Appellant that the 2nd Defendant/Appellant, Kajungu Syrus was the farm manager of the 1st Appellant's farm. The 2nd Defendant/Appellant himself pleaded in his WSD that he is an employee of the 1st Defendant/Appellant in the capacity of a farm manager and doctor in charge of the 1st Defendant's farm, livestock, crop husbandry and workers.

- [35] The Plaintiff/Respondent on the other hand sued both the 1st and 2nd Defendants jointly and severally for an order for the release of his goats which were impounded by the defendants or recovery of their value. He testified that when the goats went missing, they were eventually found confined together with those of the 1st defendant/Appellant's goats at URDT.
- [36] With the above evidence, it cannot be said as counsel for the 1st Appellant submitted that there is no evidence for a conclusion that indeed, an employer-employee relationship existed between the 1st and 2nd defendants and that the plaintiff's goats were detained jointly and severally by the Defendants. I find that there is overwhelming evidence on record that the 2nd Defendant was an employee of the 1st defendant and the plaintiff's goats were impounded by the 2nd Defendant and confined at the 1st Defendant's property, thus both Defendants are liable for the loss the Plaintiff might have suffered as a result of their actions, the actions of the 2nd Defendant being the actions of the 1st Defendant as its employee.
- [37] In evidence and the entire record of the lower court, I find as undisputed evidence that the 15 goats of the boar and half cast type belonging to the Plaintiff/Respondent were impounded by the 2nd Defendant/Appellant, a farm manager of the 1st Defendant/Appellant on allegations that the goats had destroyed the 1st Defendant/Appellant's crops and while in the Appellants' custody, all the 15 goats died.
- [38] It however later transpired through the 2nd Defendant/Appellant's written statement of defence that actually, the goats were impounded before they had entered the 1st Defendant/Appellant's gardens and therefore no crops were destroyed by the goats. Indeed, no other credible evidence is on record that the goats in question destroyed the 1st Defendant/Appellant's crops since the 2nd Defendant/Appellant who impounded the goats and therefore, the would be only eye witness never testified in court. The 2nd Defendant/Appellant's WSD however forms part of the record and the Appellants were bound by it.
- [39] The trial Magistrate found that the Plaintiff/Respondent's animals were held unlawfully by the Defendants/Appellants and they eventually died in the Appellant's custody whereupon he found the Appellants liable for compensation of the value of the goats to the Plaintiff/Respondent, I have no reason whatsoever to fault him. The Appellant's argument that the 1st Defendant/Appellant cannot be held liable for compensation of the value of the goats to the Plaintiff/Respondent therefore fails.
- [40] As regards the quantum of the compensation, the Plaintiff/Respondent led the evidence of Dr. Businge Stanley (PW3), Veterinary officer. He made a report;

"Goat production and productivity and analysis for a period from 20th May 2013 to February 2016 (P. Exh.1) and among other things, concluded that

"...an improved breeding Boar goat can fetch between three hundred thousand and five hundred thousand shillings."

In short, PW3 as a Veterinary doctor provided the current market value of the goats in question.

[41] Counsel for the Appellants criticized Dr. Businge Stanley's (PW3) report (P. Exh.1) that, first, as a veterinary officer, by virtue of his medical practice is not a valuer. Secondly, that the report dated 12/2/2016 is for the goats that died in 2013 at the time of institution of the suit i.e, 3 years after the demise of the goats in issue. In his view, the veterinary report (P. Exh.1) was an afterthought by a person who was not a qualified valuer and thus was relied on and admitted in evidence in error which led to a miscarriage of justice.

- [42] I don't agree with the above argument of counsel. PW3's evidence and report is not about the assessment or valuation of the goats that died in 2013. The report is about the current market value of the goats as reflected in the conclusion of the report where PW3 indicated his opinion that such boar crossbreed goats would fetch between shs.350,000 - 500,000/=. As a Veterinary officer, a fact that is not disputed by the Defendants/Appellants, PW3 was the right expert to give the current market value of the goats in question upon considering the remaining animals that were in possession of the plaintiff/Respondent and on the fact that these were animals for breeding purposes and a farm gate price for livestock would be a factor a reserve by the farmer only.
- [43] The trial Magistrate decreed that the defendants compensate the Plaintiff for his fifteen goats of improved breed that he lost at the current market value, each at shs. 350,000/=. I have no reason to interfere with his findings on the current market value of each goat and the order for compensation and therefore, the argument of counsel for the Appellant on this ground fails.

Order for special damages

[44] Counsel for the Appellant submitted that the Plaintiff/Respondent in his plaint never pleaded particulars of the special damages which as per the authority of Hajji Asuman Mutekanga Vs Equator Growers (U) Ltd, SCCA No.7/1992 must be specifically pleaded and strictly proved. I agree. The Plaintiff/Respondent neither pleaded any special damages regarding his loss of goats and therefore, they were not proved. I therefore find that the trial Magistrate erred in fact and law when he awarded shs. 4,000,000/= as special damages to the Plaintiff/Respondent.

Order for General damages

[45] As regards general damages, counsel for the 1st Appellant submitted that the Plaintiff never pleaded how the detention of goats caused damage to

him to warrant the award of general damages. He concluded with a prayer that this court finds that the award of general damages was without proof and the same should be set aside.

- [46] With regard to general damages, it is settled law that they are awarded at the discretion of the court, *Crown Beverages Ltd Vs Sendu*, SCCA No.1/2005. In *Okello Dafala Valente Vs A. G*, HCCS No.9/2004, the court held that the award of general damages is at the discretion of the court taking into account what the law presumes to be the natural probable consequences of the act.
- [47] In assessment of general damages, court is guided by the value of the subject matter or nature and extent of the injury with a view to put the plaintiff in the position he or she would have been if he or she had not suffered the wrong, see *Hadley Vs Baxendale* (1854) 9 Ex.341 at p.354 and *Acire Vs Angola* HCCS No.143/1993. In *Obong Vs Kisumu Council* [1971] EA 91 at p.96, the court among other things held that;

"When damages are at large and a court is making a general award, it may take into account factors such as malice or arrogance on the part of the defendant and the injury suffered by the plaintiff."

- [48] In this case, whereas it is true that the plaintiff did not lead evidence how the detention of his goats caused damage to him to warrant the award of general damages, at the conclusion of his evidence, he prayed for release of his goats and what he would have got from the goats in case they were living upto now. The case of *James Bwogi & Sons Enterprises Ltd Vs Kampala City Counsel & Anor*, SCCA No.9/2017, as per *Mwanngusya JSC* is for the proposition that failure by the party to adduce evidence as to how and what damages he suffered does not in itself disentitle a party to damages if they are deserved.
- [49] In the instant case, the trial Magistrate considered the fact that the Plaintiff lost his goats of improved breed which would have multiplied and the inconvenience suffered since 2013 to 2016 and awarded shs.4,000,000/=. This court also considers the arrogance and the malice exhibited by the Appellants when holding the Respondent's goats with the knowledge that

the goats had not caused any damage to their crops and refused to return them to the Respondent while at the same time knowing that they may die if not properly treated with medicines since they were hybrids. The death of the Respondent's goats in the hands of the Appellants must have distressed and tortured him.

- [50] In the premises, I would have no reason to fault the trial Magistrate in his award of shs.4,000,000/= as general damages.
- [51] All in all, I find that this appeal generally lacks merit. It is accordingly dismissed with the following orders;
- 1. The judgment and orders of the lower court are upheld save for the order of shs.4,000,000/= as special damages which is set aside.
- 2. Costs of this appeal are granted to the Respondent.

Dated at Hoima this 30th day of October, 2023.

Byaruhanga Jesse Ruggyema JUDGE.

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