

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

HCT-00-CC-CS-0790-2015

COSTA CONSTRUCTION SERVICES ::::::::::::::: PLAINTIFF

VERSUS

GLOBE TROTTERS LIMITED ::::::::::::::: DEFENDANT

BEFORE: THE HON. MR.JUSTICE DAVID K.WANGUTUSI

J U D G M E N T:

Costa Construction Services, Plaintiff in this case filed this suit against Globe Trotters Limited who we shall refer to as the Defendant, for recovering of a liquidated sum of Ugx 227,569,318.

The Plaintiff also in addition to the liquidated demand, prayed for general and aggravated damages and interest thereon.

The Defendant did not file a defence and so on application by the Plaintiff on 31.05.2016, the learned Registrar on 02.06.2016 entered judgment under O9 r 6 in respect of the liquidated demand.

He also ordered that since the Defendant had not filed a defence the issue of damages would be handled exparte. He set the court down for formal proof.

Judgment for the liquidated demands totaling 227,569,318 was entered by the learned Registrar and I have no reason to interfere with it.

It is the General damages that are the subject of consideration here. The Plaintiff sought both General and aggravated damages.

First the aggravated damages. These are limited to three causes first, oppressive, arbitrary or unconstitutional action by defendants mostly public institutions, secondly where the motive of making is a factor and third, where a statute imposes these damages to be paid; *Rookes V Bernald* (1964) AC 1129, *Cassell Co. Ltd V Broome* (1972) I All ER 801.

Aggravated damages only follow a situation where impunity is apparent. The Defendant's failure to pay a sum because she had no money cannot be aggregated to impunity or cynical disregard for the plaintiff's rights. I have not in my view found reason to award aggravated damages and this prayer must fail.

In her prayer for General damages, PW1 stated that because of non payment by the Defendant, they suffered massive losses because they could not utilize the money which fell prey to change of dollar rate. That this was a time when she had commitments to an Italian company and the intended deal suffered.

Furthermore, that she also defaulted in her facility obligation with DFCU.

That this delay was caused by the Defendants even after warning them of the aforementioned repercussions.

I have considered the forgoing evidence of PW1. I have not found on record any warning to the Defendants that their delayed action of payment was causing hardship and difficulty for the Plaintiff in their other contractual relationships. There was no proof of such relationships. The plaint was silent about it and seems to have come from the evidence and not the claim. The plaintiff was duty bound to plead losses in connection with their dealings with the Italian Company and Dfcu Bank. This was a specific requirement of O.6 r. (1)(2)(3)(4)(5) of the Civil Procedure Rules.

Referring to them in the submissions instead of the pleadings could not be a basis upon which the Plaintiff could found a cause of action for the claims; *URA v Wanume David Kitamirike SC CA 43/10*. These hardships mentioned are therefore not proved.

General damages are such as the law will presume to be the direct natural or probable consequence of the act complained of; *Ouma V Nairobi City Council [1976] KLR 297*.

In this case court must bear in mind the fact that the Plaintiff must be put in a position he would have been had he not suffered the wrong.

The basic measure of damages is restitution; *Dr. Dennis Lwamafa v Attorney General [1992] IKALR 21.*

It's the defendants uncontroverted evidence that relying on the construction agreement he did his part of the bargain resulting into 12 certificate approved for work completed.

That in the 11th and 12th certificate all not in dispute the defendant defaulted and did not pay despite several reminders. That money was owing is already settled by the judgment on the liquidated demand.

The plaintiffs claim for General damages is that she borrowed money to actualize the contract and that the money attracted interest.

She was deprived of the use of her well earned money which affected her business.

Taking into account all the circumstances surrounding this case, I find a sum of shs.30 million by way of General damages appropriate.

It is so awarded. The sum will attract interest of 10% p.a from date of judgment till payment in full.

The defendant is also to pay costs of the suit.

Dated at Kampala this 18th day of August 2017.

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David K. Wangutusi

JUDGE