

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 747 OF 2013

MONITOR PUBLICATIONS LTD:..... PLAINTIFF

VERSUS

ATTORNEY GENERAL:.....DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

J U D G M E N T:

Monitor Publications Ltd the Plaintiff sued the Attorney General herein referred to as the Defendant for declarations;

- a) That the actions of the Uganda Police Force that entailed closing of the Plaintiff's multimedia units on or about the 20th of May 2013 and continued closure up to 30th May 2013 was unlawful and an overstep of its mandate.
- b) That the Uganda Police Force violated the Rule of law as enshrined in the Constitution of the Republic of Uganda 1995.

The Plaintiff also seeks special damages of UGX 1,282,301,952/=, general damages, aggravated damages ,interest and costs.

The 20th of May 2013 seems to have begun like any other day in the Monitor Publication Companies however at 11:00 am the situation changed when Police arrived armed with a search warrant directing that they be allowed to conduct a search for a document that had been published on the 7th of May 2013.

The Defendant's agents conducted a search for the document but on the third day the Plaintiff moved court to vacate the search warrant. The Defendant's agents refused to vacate and for seven more days remained on the premises with no commercial operation. The Plaintiff's claiming loss of earnings filed this suit against the Defendant seeking declarations and orders that the closure was unlawful and exceeding the mandate of the search warrant. That it was

unconstitutional and that the Defendant pays special damages of UGX. 1,282,301,952/=, interest at 20% from 30th May 2013, general damages, aggravated damages, interest on them at court rate and costs of the suit.

The background as discerned from the pleadings is that the Plaintiff a Multi media business company running newspaper production and radio stations in both English and Luganda on the 7th day of May 2013 published an Article entitled “**PROPOSED INVESTIGATIONS**”. This Article did not go well with the Uganda Police Force who insisted that the copy of the Article used by the Plaintiff should be produced. The Plaintiff being of the view that it had to protect the sources of its information declined to do so. Furthermore, that it did not have in its possession the original which the Police sought.

The Defendant therefore sought for a search warrant which it obtained on the 20th day of May 2013 moved, entered and searched the Plaintiff’s premises situated at Plot No. 29- 35 on 8th Street Industrial Area in Namuwongo.

During the search it proceeded to order the switching off of radio, the closure of the printing press and the switching off of the servers. The Plaintiff being aggrieved by the action herein above mentioned proceeded and got a vacation order of the search warrant but the Defendant did not move.

On its part the Defendant admitted moving onto the premises and remaining there even after the search warrant was vacated but contended that their search was conducted under Section 27 of the Police Act and therefore did not need a search warrant.

The Defendant further contended in paragraph 6 of their Written Statement of Defence that the search which commenced on the 20th May 2013 was lawful in as much as the Plaintiff had a duty not to publish stories that would potentially promote tension, ethnic hatred, tribalism, cause insecurity or disturb law and order.

The issues for determination by the court as agreed by the parties are;

- 1) Whether by shutting down the Plaintiff’s Publishing House and its business facilities, the Defendant’s agents acted beyond the mandate in the Search Warrant? If so, whether their actions were unlawful?

- 2) Whether the Defendant's agents were justified in continuing with the closure of the Plaintiff's business facilities even after revocation of the search warrant?
- 3) Whether the actions of the Defendant's agents occasioned the Plaintiff commercial loss?
- 4) Whether the Plaintiff is entitled to the reliefs sought?

At the time of the hearing the Defendant did not call any witnesses even after they had been given time by adjournment to do so.

That being the case the Defendant did not adduce evidence to prove the negative effect of the letter. It did not show that the country underwent tension or that the letter caused ethnic hatred or created divisions amongst tribes or caused insecurity. No disturbance of law and order has been proved because of that publication.

For the Defendant to establish any of the above it was necessary to call evidence from witnesses or provide written evidence depicting the reaction of the populace of this country as a result of the publications. In absence of such evidence there is nothing to show that the Defendant should not have published the story even at the cost of the country being informed of what was being alleged by certain sections of elite in the country.

In her submissions one of the reasons why the Plaintiff's premises were referred to as a scene of crime was that they had breached section 4 of the Official Secrets Act Cap 302 of wrongful communication of information. In my view this was just an afterthought at trial because nowhere in the Written Statement of Defence was it stated that such an offence had been committed. And as I have stated already above, no witnesses have been called to that effect.

The issue of whether the Plaintiff had a right to publish whatever she wanted to publish was also considered. In her submission Miss Nabbasa appearing for the Defendant referred to Section 2 of the Press and Journalist Act which gave rights to public newspapers to publish and disseminate information. She contended that that section did not give the Plaintiff unlimited rights. She stated that the freedom was curtailed by Section 3 which provides that the right to publish did not absolve the press from complying with any other laws.

In considering the relevance of this submission Section 2 of the Press and Journalist Act provides that;

“A person may, subject to this Act, publish a newspaper.

No person or authority shall, on grounds of the content of a publication, take any action not authorised under this Act or any other law to prevent the—

printing;

publication; or

circulation among the public, of a newspaper.”

Section 3 which the learned state attorney relied on as qualification and limiting the freedom of the press provides as hereunder;

“Nothing contained in section 2 absolves any person from compliance with any law—

prohibiting the publication of pornographic matters and obscene publications insofar as they tend to offend or corrupt public morals;

prohibiting any publication which improperly infringes on the privacy of an individual or which contains false information.”

The issues in the instant case had nothing to do with pornography or obscenity and would therefore not offend or corrupt public morals.

As to privacy of the individual and falsity of the information it was upon the Defendant who was alleging that the information was false to call the alleged author of the letter or other witnesses or prove by documentary evidence that the publication was false and because of that the Plaintiff should not have published it. None of these were done.

Interestingly the alleged author of the letter was in the country and in the employment of the Ugandan government and the Defendant Attorney General had every opportunity to call him in respect of his allegations. It is also interesting that although the Defendant alleged that the letter would promote tension, ethnic hatred, tribalism, cause insecurity and disturb law and order none of the journalists nor the alleged author was prosecuted let alone being treated as suspects of commission of the offences the Defendant alleged.

There was no arrest or charge and no prosecution, handling these people in the manner the Defendant did showed that the Defendant herself did not believe that the publication would endanger the state and the citizenry of this country.

In my view the letter had been published. The alleged author was known and his whereabouts were known. There was an addressee and therefore there were copies of letters to which the Defendant could lay her hands on. In my view it is because of these available alternative sources that the Police officer D/ASP Mbonimpa Emmanuel did not find it necessary to act under section 27 of the Police Act but went through the longer method of the Court and thus filed an Application to the courts seeking a warrant to search the premises of the Plaintiff. The warrant sought and obtained by the Defendant **ExhP1** had the following contents;

“Whereas it has been proved to me that in fact or according to reasonable suspicion the following thing/things:

A DOCUMENT PUBLISHED IN THE DAILY MONITOR OF 7TH MAY, 2013, HEADED “PROPOSED INVESTIGATIONS” DATED 29TH APRIL, 2013 ADDRESSES TO THE DIRECTOR GENERAL OF INTERNAL SECURITY ORGANISATION; AND FOR AVOIDANCE OF DOUBT ANY OTHER RELATED AND SIMILAR EVIDENCE.

Upon, by or in respect of which an offence has been committed or which is/are necessary for the conduct of an investigation into an offence is/are in the building, vessel, carriage, box, receptacle, place herein named and described as:

***MONITOR PUBLICATIONS LTD, A NATION MEDIA GROUP COMPANY
PLOT NO.29-35- 8TH STREET INDUSTRIAL AREA, KAMPALA.”***

This is to authorize and require that you and any other investigating officer enter/opens the said building, vessel, carriage, box receptacle, place and search for such thing/things described as aforesaid and if found seize and carry it/ them before this Court or some other Court to be dealt with according to law, returning this warrant as endorsement certifying that you have done it immediately upon its execution.”

The Police armed with this document, the Plaintiff allowed them entry into her premises to put into effect the search warrant as it provided. It was the Plaintiff's evidence that while the warrant allowed the Defendant's officials to enter and search for the original document published in the daily Monitor of 7th May 2013 the Defendant on failing to find the document proceeded to do other things that had not been provided for in the search warrant.

PW1 Timothy Ntale Advocate and Company Secretary of the Plaintiff told court that the police had arrived at 11:00 am and the search began at 11:30 am. That at 3:00pm the police presence increased and more plain clothed security operatives were added and they became very hostile to the employees of the Plaintiff.

He further stated that operating outside the search warrant the Defendant's officials went to the fourth floor and switched off the radios. That when the Plaintiff's presenter one Fred Isakura demanded to know why they were switching off, the police officer threatened to throw him out through the window of the fourth floor. They then proceeded to the server room and switched off the server. That thereafter they proceeded to the printing press and ordered that the press be switched off and then blocked the premises entirely. They confiscated laptops and computers. In all, the operations of the Plaintiff were brought to a halt.

When it became clear on the third day that there were no more places to search but the Defendant's officials were still stuck in the Plaintiff's premises where the radio, press and the ICT services were closed, the Plaintiff on advice by their directors namely Tom Mujimdi and James Kinywa who had flown in from their Nairobi headquarters advised PW1 and other staff to challenge the search warrant.

This evidence given by PW1 on what took place during the search was not dislodged by cross-examination. It is not surprising that when the activities of the Defendant's officials were challenged the same court that had issued the search warrant vacated it in an Order dated 22nd May 2013, **ExhP2**. The Order reads;

“Upon reading and considering the Application for vacating the search warrant issued to D/ASP Mbonimpa Emmanuel on 22nd May 2013 and

upon reading the Affidavit of Mr Alex Asiiimwe, the Managing Director of Monitor Publications Limited dated 22nd May 2013

IT IS HEREBY ORDERED that;

- 1. The search warrant issued to D/ASP Mbonimpa Emmanuel on the 20th May 2013 in Misc. Application No. 2005 of 2013 is hereby vacated in the exercise of the powers given to the Court under S.11(2) of the MCA, having been satisfied that in the process of execution of the said warrant the mandate given by the warrant was over stepped.*
- 2. D/ASP Mbonimpa Emmanuel is ordered to return the said warrant to this Honourable Court this 22nd day of May 2013.”*

The endorsement on **ExhP2** shows that the order vacating the search warrant was received at the Police headquarters on 23rd May 2013. PW1 however stated that on the 22nd May 2013 attempts to serve the officers who were at the Plaintiff’s locked-up premises were futile since they refused to receive the order. It is not in dispute that the Defendant’s agents refused to vacate the premises. The reasons for refusal were not given. The Defendant’s officials stayed on the premises until 30th May 2013. What has to be considered was whether switching off the Plaintiff’s equipment and bringing to a halt the chain of production was within the warrant they had been given. Furthermore, whether the Plaintiff’s continued closure after vacation of the search warrant was lawful.

As I said earlier no witnesses were called for the Defendant. As it stands therefore the only evidence available is documentary evidence running from **ExhD1** to **D7** but not very helpful on the authority on which the Defendant’s officials based themselves to close the Plaintiff’s business. In submissions of Counsel for the Defendant, she contended that after the search warrant was vacated the Police acted under Section 27 of the Police Act because it was considered a scene of crime. I find it necessary to reproduce Section 27 of the Police Act in its entirety;

“27. Search by police officers

(1) Whenever a police officer, not being lower in rank than a sergeant , has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he or she is authorised to investigate may be found in any place and that that thing cannot in his or her opinion be otherwise obtained without undue delay, the officer may, after recording in writing the grounds of his or her belief and specifying in the writing, so far as possible, the thing for which search is to be made, search, or cause search to be made for that thing.

(2) A police officer proceeding under subsection (1) shall, if practicable, conduct the search in person.

(3) If he or she is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he or she may, after recording in writing his or her reasons for so doing, require any officer subordinate to him or her not below the rank of corporal to make the search; and he or she shall deliver to that officer an order in writing specifying the place to be searched and, so far as possible, the thing for which search is to be made, and that officer may thereupon search for that thing in that place.

(4) The provisions of the Magistrate Courts Act as to search warrants shall, so far as may be, apply to a search made under this section

(5) Copies of any record made under subsection (1) of (3) shall immediately be sent to the nearest magistrate empowered to take cognizance of the offence and to the owner or occupier of the place searched.

(6) The occupant of the place searched, or some other person in his or her behalf, shall, in every instance, be permitted to attend during the search; and where possible a local leader should be present during the search.

(7) Notwithstanding the provisions of this section or the provisions of the Magistrates Courts Act relating to the search of the premises, no police officer shall search any premises unless he or she is in possession of a search warrant issued under the provisions of the Magistrates Courts Act or he is carrying a warrant card in such form as shall be prescribed by the inspector general.

(8) On the request of the owner or occupier of any premises being searched by a police officer, the police officer shall show that owner or occupier the search warrant authorizing the search of the premises or his or her warrant card, as the case may be.

(9) A search conducted under this section shall be carried out in a humane manner and unnecessary damage or destruction to property shall be avoided.”

From the section above the Police officer could only search without a warrant under the provisions of Section 27(1). He had to be of a rank of Sergeant and above and honestly believe that there was something necessary for the purpose of an investigation into the offence he or she was investigating to be found in the place he intended to be searched and that the thing he was searching for could not be obtained without undue delay.

It is however also a requirement that that officer must put down in writing the grounds of his or her belief and specify in writing so far as possible the item he is searching for. The Written statement of Defence does not mention anywhere that this was done and as I said earlier no evidence was called for the Defendant to show court that this procedure was followed. The notification by the search warrant could not be relied upon because it had been vacated and was therefore of no consequence.

It is also a requirement under Section 27(5) that copies of record made under Sub-section (1) or (3) would immediately be sent to the nearest Magistrate empowered to take cognizance of the

offence and to the owner or occupier of the place searched in this case the Plaintiff. This was not done.

Thirdly, under Section 27(9) the search was supposed to be carried out in a humane manner. In the instant case we have been told, which was not rebutted, that the Police threatened to throw the Plaintiff's presenter through the window. These provisions under Section 27 are mandatory if one is to claim protection under Section 27.

In addition to the threat to throw the Plaintiff's radio presenter through the window of the fourth floor PW1 also testified that after the search warrant had been vacated the Defendant's agents were infuriated and those workers who came were beaten and sent away. That Charles Mwangusya, Chris Obore and Sudhir Byaruhanga were some of the senior employees of the Plaintiff who were roughed up. This evidence of assault has not been dislodged. It is an accepted principle of law that even where you have entered the premises lawfully but you begin doing there criminal acts like threatening violence or assaulting the host you become a trespasser; **The Six Carpenters' Case (1610) 8 Co. Rep 146a, 77ER 695, Cinnamond & Others vs British Airports Authority (1980) 2 ALL ER 368.**

In the instant case the moment the Defendant's agents threatened to hurl Fred Isakura through the window and roughed up Mwangusya Charles, Chris Obore and Sudhir Byaruhanga the protection of the search warrant and section 27 of the Police Act ceased to apply because they now became trespassers *abinitio*. They would turn trespassers even if they had commenced the search under section 27 of The Police Act

Considering all the circumstances surrounding this case it is clear that the search was not done under Section 27. The Written statement of Defence itself clearly spells out the procedure which was adopted. Paragraph 5(c) of the defence states that "the Defendant shall contend that it applied to Nakawa Chief Magistrate court on 16th May 2013 to compel officials of the Plaintiff to produce the letter entitled "**PROPOSED INVESTIGATIONS**" and its source published on 7th May 2013. The Defendant shall aver that it secured the court order on 16th May 2013 and served the same on the Company of the Plaintiff on the same date"

When the Plaintiff's director's failed to produce the original letter the Defendant then proceeded to apply for a search warrant. Paragraph 5(f) of the Written Statement of Defence;

“The Defendant shall contend that as a result of the blatant refusal by the Plaintiff to produce the documents, a search warrant was secured on 20th May 2013 from Nakawa Chief Magistrates Court, granted by Her Worship Bareebe Rosemary authorizing a search to be conducted at the Daily Monitor premises to recover the said document.”

It is under the foregoing that the Defendant searched the premises. In any case after the court had found that their activity was beyond what was expected of them and had directed that it be stopped the recourse open to the Defendant was to seek setting aside of that order. To act otherwise and continue without in fact returning the search warrant to the court did not only mean disobedience to court orders but the continuation of a process originally allowed by the court but had now been vacated. The fact that the officials of the Defendant did not go through the cores provided for under Section 27 of the Police Act only moves to confirm that the officials remained in occupation under a vacated search warrant.

It is even no wonder that the defence of Section 27 of the Police Act does not appear anywhere in their Written Statement of Defence. In my view it is something the Defendant's attorney attempted to introduce at the hearing of the suit. That being the case the issue on whether the Defendant's agents acted beyond the mandate in the search warrant by closing operations of the radios and the servers is answered in the affirmative. In any case the Learned Magistrate had already found that the Defendant's agents overstepped their mandate given by the warrant.

Having found that they overstepped their mandate all those actions that were done which included the switching off of the radios, servers, being hostile, roughing up employees of the Plaintiff and threatening to throw a presenter through the window of the fourth floor were unlawful.

On whether the Defendant's agents were justified in continuing with the closure of the Plaintiff's business facilities after revocation of the search warrant this court has found that the search was

conducted under a mandate of a search warrant given by court and that after vacation of that search warrant the Defendant did not return it to court as ordered and without fulfilling the requirements of Section 27 of the Police Act continued acting under a revoked warrant which was illegal. Furthermore, it is already this court's finding that the threat to throw Fred Isakura out through the window and the roughing up of three senior employees of the Plaintiff rendered the Defendant's agents trespassers *abinitio*. For those reasons it is this court's finding that the Defendant's agents were not justified in continuing with the closure of the Plaintiff's business facilities without following procedure.

The Plaintiff is comprised of the Monitor which are Daily Monitor, Saturday and Sunday Editions more specifically referred to as Saturday Monitor and Sunday Monitor. It also runs two radio stations namely; 93.3 KFM and 90.4 Dembe FM. These are run for a commercial purpose for profit. They can only make money if they are running. From 20th to 30th May 2013 they were closed that is to say the radios were switched off, the press was stopped and the online communication and news were also stopped by switching off the servers. In short, they were prevented by the Defendant from making money.

Since this court has found that the closure from 20th May 2013 to 30th May 2013 was unlawfully done by the Defendant it is this court's finding that the Defendant's agents occasioned the Plaintiff commercial loss.

The Plaintiff prayed for special damages of UGX. 1,282,301,952/= . Special damages are to be specifically pleaded and strictly proved; **Hajji Asuman Mutekanga vs Equator Growers (U) Limited SCCA No. 7 of 1996.**

To prove this loss the Plaintiff called Arthur Maholo PW2 its Revenue Accountant who stated that at the time the Defendant closed the Plaintiff he was the special project accountant and his roles then included reconciliation for customers and debt collection. He stated that the Plaintiff was closed for ten days and it is on the basis of ten days that he was calculating the sums. He summarized the lost income under the various heads as in **ExhP8**;

Description

Amount (UGX.)

Circulation	315,799,500
Advertising	<u>510,102,623</u>
	<u>825,902,123</u>
Staff Related Costs	186,121,456
Statutory Deductions Paid Out:	
PAYE	46,542,028
NSSF	27,918,218
Other Operating Expenses Incurred	76,644,323
Other Lost Revenue:	
Radio- KFM	66,256,960
Radio- Dembe FM	20,591,252
Ennyanda	9,900,000
Digital	7,425,592
Commercial Printing	<u>15,000,000</u>
Computed Loss:	<u>1,282,301,952</u>

Print advertising and circulation of the newspapers were in **ExhP9**. This **ExhP9** was used to show the average revenue for April and May which he stated enabled him to work out on an average the Plaintiff would get in the ten days that she remained closed. These averages per day were multiplied by ten which represented the time of closure.

The figures that were used were based on actual sales that were done in April and May before closure. PW2 also relied on orders that had been made and contracts that had been entered into. These contracts included advertising revenue which in my view could be calculated because the orders for advertisement were easy to tell and the cost of advertisement already spelt out in the day to day workings of the Plaintiff.

Considering their sales in April PW2 was in a position to find out the average sales on each day of the week and was in a position to compute the lost sales based on the cost of the papers. To prove advertising contracts the Plaintiff tendered agreements between itself and Ecobank, **ExhP7** with New Africa Analysis Limited and Boston Enterprises Limited. PW2 also gave evidence on

money paid out as PAYE of UGX. 45, 542,028/=. Also, money paid out by the Company as contribution towards NSSF as UGX. 86,546,477/=. PW2 also testified that on the sums of money termed as entertainment like canteen expenses, medical, cleaning services and these were services contracted to service providers who were paid monthly.

PW2 also claimed money to UMEME as a utility. He stated that the security gadgets and lighting system were left on as well as the guards. Then there were automation services like photocopying and scanners which were contracted out and water that the policemen used.

PW2 also mentioned a claim for refund of money spent by the directors of the Plaintiff when they flew to Uganda during the closure crisis. This claim I can however out rightly say was not pleaded. It is trite that special damages must be specifically pleaded and strictly proved. Since this claim was not pleaded it cannot stand.

Counsel for the Defendant submitted that the claims by the Plaintiff were not supported by any written documents. That is true, but then claim for money can be proved by oral evidence. This proposition was considered by my learned brother Justice Bashaija Andrew in **Mohanlal Kakubhai Radia vs Warid Telecom Uganda Limited Civil Suit No. 224 of 2011, where relying on Gapco (U) Limited vs A.S Transporters (U) Limited C.A.C.A No. 18 of 2004** he observed;

“It is also the established law that special damages must be specifically pleaded and strictly proved, but that strictly proving does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence, for example the person who received or paid money or testimonies of experts conversant with the matters.”

PW2 was the Revenue Accountant. He was custodian of accounts. He was the expert in the Plaintiff. He was therefore in possession of the records which he said were voluminous. He stated that he extracted the figures from the records. Under these circumstances, even without documentary evidence PW2 could directly give testimony concerning their sales and incomes

after studying the records and analyzing their sales in respect of radio broadcast, newspaper circulation and online services.

I listened to him during his evidence in chief and cross examination. He with no doubt knew his subject concerning the production and sales of the Plaintiff. There is no doubt that the Plaintiff's sales were big before the closure with a substantial amount of print in circulation. The formula Pw2 used coupled with contract documents used by him in reaching the sums presented was impressive and convincing and I have no doubt that those were the sums of money that the Plaintiff lost due to the closure.

In considering how much of the sums claimed should be given to the Plaintiff, one has to deal with the issue of money spent to arrive at how much would the Plaintiff at the end of the day retain.

The Plaintiff's claim seems to include what in any case she would have spent even if her business was not interfered with. These are expenses shown in summary **Exhibit P8**. From the Plaintiff's summary of lost income it is noted that it includes also money that would have been spent during that period as;

Staff related costs	UGX. 186,121,456/=
PAYE	UGX 46,542,028/=
NSSF	UGX 27,918,218/=
Other Operating Expenses	UGX. <u>76,644,323/=</u>
Total	<u>UGX. 337,226,025/=.</u>

The amount of UGX. 337,226,025/= should not be inclusive in the lost income because it was never income but the Plaintiff's obligation. Therefore the Plaintiff's claim should be less by the expense amount being;

Computed loss	UGX. 1,282,301,952/=
Less expenses	<u>UGX. 337,226,025/=</u>
	<u>UGX. 945,075,927/=</u>

The total lost income therefore is UGX. 945,075,927/= excluding the operating expenses of the Plaintiff because they were meant to be incurred by her and not earned.

The Plaintiff also claimed general damages. These are damages that a court may award when it cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man; **Prehn vs Royal Bank of Liverpool [1870] L.R 5 ER 92 at 99.**

This award is in the discretion of the court and will be presumed to be the natural and probable consequence of the Defendant's act or omission; **James Fredrick Nsubuga vs Attorney General HCCS No. 13 of 1993.**

It follows that a Plaintiff who has suffered damage due to the wrongful act of the Defendant must be put in a position as near as he should have been in had he or she not suffered the wrong. In assessing the quantum of damages, courts are namely guided by the value of the subject matter, and the economic inconvenience that a party may have been put through; **Kibimba Rice Limited vs Umar Salim SCCA No. 17 of 1992.**

In the instant case the Defendant did not only unlawfully occupy the premises, but also proceeded to switch off all her operations coupled with violence exerted on the employees. It is a big business with a heavy turnover. The Plaintiff lost earning which money has been deprived of them since 2013. Considering all the circumstances of this case, I would award general damages of UGX. 100,000,000/=.

The Plaintiff also prayed for aggravated damages. These are awarded under circumstances where the Defendant has acted in a high-handed manner, insulting, malicious or oppressive; **Esso Standard (U) Limited vs Semu Amanu Opio SCCA No. 3 of 1993.** Because of the conduct I have mentioned above the court may increase the compensation to the Plaintiff which would be referred to as aggravated damages.

In the instant case the Defendant did all that would put this case amongst those wherein aggravated damages would be awarded. First of all they were high-handed and malicious when they switched off the instruments of production at the Plaintiff's premises, when the search

warrant only allowed them to search for a document. They were also high-handed and oppressive when they threatened to throw the presenter through the window of the fourth floor and crowned it with roughing up the other three senior employees of the Plaintiff.

They acted arbitrarily when they refused to comply with the court order vacating the search warrant. All those combined created conduct that attracted extra compensatory measure in form of aggravated damages.

In view of the foregoing and considering all the circumstances of this case I would award UGX. 100,000,000/= as aggravated damages.

Counsel for the Plaintiff sought for certificate of two counsel. His argument was that since both Counsel had participated in the hearing and that the preparation of the case was very demanding involving a lot of research on novel points of law his prayers for certificate of two Counsel was justified.

By way of reply Counsel for the Defendant submitted that this was a simple case which could be handled by any lawyer. There was nothing new and there was nothing novel.

I have considered both submissions. I found this case interesting and in need of considering an uncommon situation of where an authority shifts from one procedure to the other because the first one has been denied by court.

Before a court can award a certificate of two Counsel it must be established that it was reasonable to have both of them. This can be construed from the amount recovered or paid in settlement or the reliefs sought and recovered. It must also consider the importance and difficulty of the case and the amount sued for.

This case was of great importance because it involved the freedom of press which is a cornerstone for the rule of law and the only means that the citizenry has to know whatever developments are taking place in the economic, social and political fields. That being very important matter the need for two or more advocates was justified and because of that the certificate of two Counsel is awarded.

The Plaintiff also prayed for interest on special damages at a rate of 20% from 30th May 2013 till payment in full. In **Uganda Revenue Authority vs Stephen Mabosi SCCA No.16 of 2005** the courts held that interest was at the discretion of court but this discretion must be exercised judiciously. As held in **Harbutt's Plasticine Ltd vs Wyne Tank & Pump Co. Ltd [1970] 1Ch 447** the basis for the award of interest is that the defendant has kept the plaintiff out of his money; and has had use of it himself, so he ought to compensate the plaintiff.

No reasons were given to justify such a high rate of interest but at the same time this was a business enterprise and losses must be considered with a commercial lense. I would in the circumstances award interest at 18% per annum on special damages from date of filing till payment in full.

As for interest on general and aggravated damages it is awarded at 6 % per annum from date of judgment till payment in full. The Plaintiff is also entitled to costs.

In conclusion judgment is entered in favour of the Plaintiff against the Defendant in the following terms;

- a) The closure of the Plaintiff's multimedia business by the Defendant from the 20th day of May 2013 to 30th May 2013 was unlawful and overstepped its mandate as provided in the search warrant.
- b) That the Defendant's agents acted in breach of the principle of rule of law as espoused under the Constitution.
- c) That the Defendant pays UGX 945,075,927/=
- d) That the Defendant pays general damages of UGX. 100,000,000/=
- e) That the Defendant pays aggravated damages of UGX. 100,000,000/=
- f) Certificate of two Counsel is awarded.
- g) Interest on (c) at 18% per annum from date of filing till payment in full.
- h) Interest on (d) and (e) at 6% per annum from date of judgment till payment in full
- i) Costs of the suit.

Dated at Kampala this 16th day of August 2018

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Hon. Justice David Wangutusi

JUDGE