

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO 0067 OF 2003

KUSIIMA GEOFFREY ..... PLAINTIFF

VERSUS

1. YAHAYA JAS }
2. GERISON KATANYWA } ..... DEFENDANTS

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA

JUDGMENT:

The plaintiff's claim against the Defendant's is for recovery of special and general damages, interest thereon and costs. On 6<sup>th</sup> October, 2003 summons to file written statements defence were served on the defendants as per an affidavit sworn by Jackson Mwesigye and filed in Court on 22<sup>nd</sup> October 2003. Both defendants did not file their written statements of defence and an interlocutory judgment was entered against them under the provisions of Order 9 rule 6 of the Civil Procedure Rules by the Deputy Registrar. The suit was set down for formal proof hearing.

The plaintiff was represented by Mr. Jonathan B. Abaine. In his evidence the Plaintiff, Geoffrey Kusiima, testified that he had rented land at Masindi from the first defendant Yahaya Jas for purposes of grazing his cattle. The plaintiff kept there 120 heads of cattle. He left the cattle under the care of his two herdsmen, Kayibanda and Kayumba, who were working under the supervision of the first defendant. The plaintiff received communication from one Sande that his cows had been sold and seven of them traced at Uganda Meat Packers at Kampala. That

at Kampala seven heads of cattle were recovered from the second defendant Gerison Katanywa. The second defendant informed the plaintiff that the cows had been given to him by the first defendant to sell them from him. At the farm the plaintiff found that 70 heads of cattle were missing. The herdsmen told the plaintiff that the first defendant had told them that the Plaintiff has directed him to sell the cows. When asked the first defendant informed the plaintiff that the missing cows had died. The first defendant could not show the plaintiff the hides as proof of death. The plaintiff is seeking to recover the value of the missing cows from the defendants.

In support of his claim the plaintiff called the evidence of Kezimbira Ephraim. The witness testified that he intercepted five of the plaintiff's cows. That he first intercepted two cows which he found being loaded on a truck by the second defendant in the market at Kijunjubwa Masindi. That when the witness inquired from the second defendant why he was selling the Plaintiffs cows the second defendant informed the witness that he had been requested by the first defendant to sell the cows. About a month later the witness saw another three of the plaintiffs cows brought in the market by one Kayondo. When asked Kayondo informed the witness that the cows had been sold to him by the second defendant. When the witness contacted the second defendant, he informed the witness that he had bought the cows from the first defendant. That when the witness asked the first defendant, the first defendant only admitted having sold only one cow to get money for the cows treatment. The first defendant informed the witness that the other four cows had died. The witness decided to inform the Plaintiff about the five cows he had seen being sold.

The above evidence shows that the plaintiff had entrusted the supervision of his cattle with the first defendant. Seventy heads of cattle out of the 120 on the plaintiff's farm went missing. On two occasions PW2 Kazimbira Ephraim., who was familiar with the plaintiff's cattle as they shared the same Kraal, found five cows of the plaintiff in the market at Kajunjubwa Masindi being loaded on trucks. On the first occasion he saw two cows and on the second occasion he saw three cows. On the first occasion the cows were being loaded by the second defendant. On the second occasion the cows were being loaded by one Kayondo who claimed that he had brought them from the second defendant. On both occasions the second defendant claimed to have got the cows from the first defendant. It is the evidence of the plaintiff that when he learnt of this illegal practice and took action seven of his cows were recovered from the second defendant at the Uganda Meat Packers, Kampala. The evidence shows that the defendants were in the practice of converting the plaintiff's cows to their personal financial gain. It is the evidence of the plaintiff and his witness that the cows were mature and the prevailing market price at Masindi was Shs350,000/= per cow.

None of the defendants filed a written statement of defence. In the circumstances the plaintiff's evidence is neither denied nor rebutted by any evidence or pleading to the contrary. In Agadi Didi V/S Jane Namakajo H.C.C.S. No. 1230 of 1998 ((1989) KALR 180) it was held that failure to file a defence raises a presumption or constructive admission of the claim made in the plaint and the story by the plaintiff in the absence of a defence to contradict it, must be accepted as the truth See also Francis Babuzabirwa V/S Faidi Ali t/a Muhamed's Garage H.C.C.S. No. 623 of 1992.

In the circumstances I find that the plaintiff has on a balance of probabilities proved that the defendants took the plaintiffs cows from his farm and sold them for their personal gain. In total 70 heads of cattle were taken of which only seven heads of cattle were recovered from the Uganda Meat Packers by the Plaintiff. 63 heads of cattle were not recovered. The plaintiff is entitled to recover the value of the 63 cows at the prevailing price of Shs350,000/= per head making a total sum of Shs22,050,000/=. The plaintiff is awarded special damages in the sum of shs22,050,000/=.

The plaintiff also claimed for general damages. The evidence shows that the plaintiff did not authorize the sale of his cattle. Neither is there evidence to show that the Plaintiff had intentions of to sell the cows at the material time. It is the Plaintiff's evidence that after learning of the sale of his cows he reported the matter at the Police Headquarters at Kampala where he was referred to Masindi Police Station where he was advised to file this suit. The seven cows recovered from the Uganda Meat Parkers had to be transported back to Masindi. The plaintiff must have incurred expenses and was inevitably inconvenienced. There was no guidance offered in this regard, however, I find the sum Shs2,200,000/= adequate as general damages and award the same.

The Plaintiff is awarded interest on both the special and general damages at the court rate from the date of this judgment until payment is in full. The plaintiff is also awarded costs of this suit.

Lameck N. Mukasa  
Judge