

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CS-0021-2004

EMMANUEL TURHAMUHIKA KIKONI..... PLAINTIFF

VS

UGANDA ELECTRICITY BOARDDEFENDANT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

JUDGMENT

During September and October 2000 the defendant entered the plaintiffs land at Itaano L.C. 1, Kebisoni, Rukungiri District and turned a strip of that land measuring 700 metres by 30 metres into an electricity way leave. In the process a high voltage line of 33 KV passed over land comprised in Rujumbura Block 20 Plots 115 and 192 and the plaintiff's hedge and eucalyptus trees were cut down. It is the plaintiffs case that he has lost use under the strip of land already mentioned the extent of which was assessed at 5.18 acres. The defendant neither sought the consent of the plaintiff nor compensated him. Hence this suit.

At the scheduling conference the parties agreed the following facts:

1. That the plaintiff is the owner of the land in issue.
2. That the defendant passed electricity power lines through the land without the consent of the plaintiff.
3. That prior notice was not given by the defendant to the plaintiff
4. That the defendant did not compensate the plaintiff.

The two issues agreed by the parties were:

1. Whether the defendant trespassed onto the plaintiffs land.
2. Whether the plaintiff is entitled to the prayers sought.

The plaintiff called one witness, Aberi Berunga, the L.C.1 Chairman, besides himself, to prove his case. On the other hand no evidence was given on behalf of the defendant.

Regarding the first issue, the tort of trespass to land occurs when one enters upon another's land and places there or projects any material object on it without lawful justification. The evidence given on behalf of the plaintiff as well as the agreed facts were to the effect that indeed there was trespass by the defendant on the plaintiffs land. Therefore my answer to this issue is in the affirmative.

The second issue is whether the plaintiff is entitled to the prayers sought. Those prayers are:

- a) Special damages of Shs. 54,088,580/=.
- b) General damages for trespass/unlawful occupation of the land.
- c) Interest on (a) and (b) above at a rate of 28% per annum from the date of the cause of action till payment in full.
- d) An order that the defendant fully compensates the plaintiff.
- e) Costs of the suit.

Damages are awarded as recompense. The position was accurately put by Earl Jowitt in *British Transport Commission vs Gourley* [1956] AC. 185, 197, thus:

‘The broad general principle which should govern the assessment of damages in cases such as this is that the tribunal should award the injured party such a sum of money as will put him in the same position as he would have been if he had not sustained the injuries ----.’

Needless to say ‘injury’ and ‘loss’ are used interchangeably in cases of tort. PW1 in his evidence stated that because he was told not to graze his cattle underneath the wires his cows no longer graze under the wires which cover the strip of land. On the other hand it was the evidence of PW2 that the plaintiffs cattle still graze underneath the affected strip of land and that in fact the plaintiff has crops growing in some areas underneath the wires. While I note that the plaintiff spends most of his time in Kampala I am aware that his witness is in the locality most of his time. I have no doubt his version of what happens in the area is more credible than that of the plaintiff himself. I cannot help noting that the reason given by the plaintiff why he thought he merited general damages was that his esteem in the area had been reduced when people thought that he could not defend his property in court. With the case being heard no doubt that perception

should change. All in all I see no loss suffered by the plaintiff deserving of general damages. He is entitled to none.

The plaintiff claims Shs. 54,058,580/= as special damages. Special damages need to be specifically pleaded and strictly proved. See Masaka Municipal Council vs Semogerere [1998-2000] HCB 23. In this case exhibit P III which is a report made by surveyors hired by the plaintiff was received in evidence. According to that report the area affected by the trespass in issue is 5.18 acres. The report determined the value of an acre as Shs. 8,000,000/=. The sum of Shs. 8,000,000/= was arrived at following no apparent research. Interestingly sections 59(1) and 77 (3) of the Land Act, Cap 227 of the Laws of Uganda were never called to aid. On the other hand the evidence of PW2 gave the value of an acre in the locality of the suit property as being Shs. 2,000,000/=. I find the evidence of PW2 more reliable as he is not only a resident of the area but also the L.C.1 Chairman of the locality purposely called by the plaintiff to testify on matters pertinent to that locality. His testimony was not challenged. Taking Shs. 2,000,000/= as the more likely value for an acre of land, I do award Shs. 10,360,000/= as special damages for the area affected by the high voltage electricity way leave. I take judicial notice of the fact that no habitable building is allowed to be constructed in the area affected thus limiting the plaintiff's use of the land. In addition to the sum the plaintiff is also entitled to Shs. 150,000/= for the five eucalyptus trees cut down and Shs. 16,600/- for the destroyed fence.

According to the report the two sums were arrived at basing on the compensation schedule for the neighbouring Bushenyi District for the year 2000/2001. I see no reason why I should disturb the calculations.

In the result an aggregate Shs. 10,526,000/= is awarded as special damages.

The plaintiff is also entitled to costs of this suit.

Interest on the damages and costs will be at 20% per annum from the date of this judgment until realization in full.

P. K. Mugamba

Judge

2nd march 2005