

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LIRA
Civil Suit No. 002 of 2013

AYO PETER :::PLAINTIFF

VERSUS

1. ATTORNEY GENERAL

2. LT.AMBROSE OWINY OCEPA:::DEFENDANT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

JUDGMENT

- [1] The plaintiff filed this suit against the defendants for *recovery of Motorcycle registration No.UPQ 771, Engine No. 109991, Chassis No.110017, yellow in colour and a Suzuki make, general damages and costs of the suit arising from a violation of the right to property.*
- [2] The background of this suit is that the plaintiff who owns the above described motorcycle was deprived of the same by the 2nd defendant on 17/05/2012. The plaintiff being aggrieved filed Civil Suit No. 002 of 2013 against the defendants. Only the 1st defendant filed a defence on 18/12/2013 and an exparte

judgment was entered against the 2nd defendant upon his failure to file a defence. The 2nd defendant filed two applications to set aside the exparte judgment, M.A No. 073 of 2014 and M.A No. 039 of 2014 which were consequently dismissed by this court on 07/12/2015. The plaintiff then withdrew his claim against the 1st defendant on 25/03/2019 and the suit was set for formal proof of the claim against the 2nd defendant.

[3] The following three issues were framed for courts determination:

- 1. Whether the plaintiff owns Motor Cycle Registration No.UPQ 771, Engine No.109991, Chassis No.110017, yellow in color?***
- 2. Whether the 2nd defendant violated the plaintiff's right to property?***
- 3. Whether the plaintiff is entitled to the remedies sought***

Issue one: Whether the plaintiff owns Motor Cycle Registration No.UPQ 771, Engine No.109991, Chassis No.110017, yellow in color?

[4] It was submitted for the plaintiff that he purchased the said motorcycle on 15/10/2008 from PW2 Mr. Ogola Patrick. He also tendered in evidence the sales agreement and the log book which were admitted as PEX1 and PEX2 respectively. PW2 corroborated this evidence by testifying that he sold the motorcycle at Ugx 1,300,000/= having bought the same at Ugx

1,100,000/=. The plaintiff invited court to resolve this issue in the affirmative.

- [5] I have carefully examined the sale agreement and the additional evidence adduced by the plaintiff. I have no reason to doubt that this motorcycle was sold to the plaintiff by PW2 thereby conferring ownership of the same on him. In the circumstances therefore, this issue is answered in the affirmative.

Issue 2; Whether the 2nd defendant violated the plaintiff's right to property

- [6] It was submitted that on 17/05/2022, the plaintiff took his motorcycle to PW3 Onyang Jimmy's garage for repair and service from where it was picked and taken to Central Police Station (CPS) as property suspected to have been stolen. The complaint at CPS had been made by the 2nd defendant and one Okwir Gwido had been implicated. PW3 stated that he had refused to hand over the motorcycle but that on seeing three police officers and six soldiers who all had guns, he feared for his life and let the 2nd defendant take the motorcycle. The plaintiff on receiving this information went to police and made a statement, availed police with a copy of the logbook and looked for Okwir Gwido whom he availed to the police and kept accompanying him for every visit.
- [7] However, during one of the visits, the plaintiff did not find the motorcycle. He was informed by District Police Commander (DPC) that it had been handed over to the 2nd defendant. The plaintiff was also called to avail the original logbook of the

motorcycle to police. He was aggrieved and instructed his lawyers to file this suit. When PW2 went to the DPC and showed proof of ownership of the motorcycle before sale, he was informed that he had no case to answer and that the motorcycle would be given back to Ayo Peter, the owner.

- [8] It was submitted that the 2nd defendant used the police and army officers to deprive the plaintiff of his property. That the 2nd defendant who is not clothed with any right over the motorcycle acted unlawfully and infringed on the plaintiff's right of ownership of the motorcycle. Furthermore, that the 2nd defendant's failure to file a defence is indicative of his admission of liability.
- [9] Article 26 of the Constitution of the Republic of Uganda provides that;

26. Protection from deprivation of property

(1) Every person has a right to own property either individually or in association with others.

(2) No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied;

(a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and

(b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for;

(i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and

(ii) a right of access to a court of law by any person who has an interest or right over the property.

- [10] The plaintiff having shown proof of his ownership through the sale agreement and the original logbook indeed confirms that he was deprived of his right to property that belongs to him. Furthermore, there was proof of ownership by PW2 who sold the motorcycle to the plaintiff. The indifference of the 2nd defendant in failing to appear in court to answer claims against him indeed confirms that he arbitrarily acquired the plaintiff's motorcycle without any proof of ownership or colour of right of ownership of the same thereby interfering with the plaintiff's constitutionally guaranteed right to property.

Issue 3; Whether the plaintiff is entitled to the remedies prayed for?

- [11] The plaintiff prayed for an order declaring that motorcycle registration No.UPQ 771, Engine No. 109991, Chassis No.110017, yellow in colour and of a Suzuki make belongs to and should be handed over to the plaintiff, general damages, costs of the suit and interest on the general damages at court rate from the date of judgment until payment in full.
- [12] In regard to general damages, it was submitted that the plaintiff suffered shock, was disadvantaged in terms of transportation, always worried that the 2nd defendant would harm him, and was disturbed as concerning payment of school fees for his son at university and his service delivery was equally greatly affected.

- [13] General damages are awarded to the plaintiff by the court at its discretion following any grievance that could have been suffered as a result of the defendant's actions. In the case of **Joweria Gava and Hawa Gava Vs Fausia Konde Gava Misc. Cause No.77 of 2010** it was held that;

"it is trite law that general damages are the direct or probable consequence of the act complained of. Such a consequence may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering",

- [14] It should be noted that general damages are compensatory in nature and should return the plaintiff to some satisfaction as far as money can do. See **Takiya Kashwahiri & Anor Vs Kajungu Denis, C.A.C.A No. 85 of 2011**. In the circumstances therefore, I award general damages of Ugx 25,000,000/= which I believe will be sufficient to restore the plaintiff to the position in which he was before his motorcycle was taken and give him some form of satisfaction.

- [15] The plaintiff also prayed for interest on the general damages at court rate from the date of filing this suit till payment in full.

- [16] In **Section 26 of the Civil Procedure Act** it is stated that

"an award of interest is at the discretion of Court which is also vested with the power to determine the rate it may think just where there is no prior agreement between the parties."

- [17] In the process of awarding interest, courts are guided by the prevailing economic circumstances. For instance, a just and reasonable interest rate would be one that keeps the awarded

amount cushioned against the ever rising inflation and drastic depreciation of the currency as may be caused by different factors. See **Mohanilal Kakubai Radia Vs Warid Telecom Ltd Civil Suit No.234 of 2011**. A plaintiff ought to be given such a rate that does not neglect the prevailing economic value of money but would at the same time cushion the plaintiff from any economic vagaries and the depreciation and inflation of the currency. In that regard therefore, I find the **interest rate of 6%** to be sufficient, just and fair and it is accordingly imposed. The rate shall apply to the general damages awarded.

- [18] In regard to costs, the plaintiff while relying on the case of **Banco Arabe Espanol Vs Bank of Uganda SCCA No.8 of 1998**, submitted that costs follow the event. Further that the plaintiff has incurred legal costs in retaining Counsel throughout the nine years in which the case has been in court, transportation and feeding of witnesses, processing and serving documents like hearing notices and summons to file a defence.

Section 27 CPA is to the effect that; “

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of the incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and give all necessary directions for the purposes aforesaid”

[19] The plaintiff having succeeded on all the issues herein, and having not been found guilty of any dilatory conduct, the court is inclined to grant him the costs of this suit. The plaintiff is hereby awarded the costs of this suit.

[20] **Resultantly**, the plaintiff having proved his case on a balance of probabilities, judgment is accordingly entered against the 2nd defendant and the court hereby makes the following **orders**;

1. that Motorcycle No.UPQ 771, Engine No. 109991, Chassis No.110017, a Suzuki and yellow in colour belongs to and should with immediate effect be returned to the plaintiff.
2. that the 2nd defendant pays to the plaintiff Ugx 25,000,000/= as general damages;
3. that the 2nd defendant pays interest of 6% on (2) above from date of judgment till payment in full;
4. that the 2nd defendant pays the costs of this suit.

Dated, signed and delivered at Lira this 16th day of March,
2023



Duncan Gaswaga

JUDGE