

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

Civil Suit No. 011 of 2020

1. DR.AMEGOVU TIMOTHY

2. ASIRE BETTY:::PLAINTIFFS

VERSUS

1. UNIVERSAL INTER LINK CO. (U) LTD

2. OPIO TONNY:::DEFENDANT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

JUDGMENT

- [1] The plaintiffs filed this suit against the defendants jointly and or severally for recovery of *Ugx 28,000,000/= being monies paid by the plaintiffs for Motor Vehicle Reg No. UBC 893B, general damages, punitive and exemplary damages, interest on the Ugx 28,000,000, punitive damages at 40% from the day of breach, until payment in full and costs of the suit.*
- [2] The background of this suit is that the plaintiff on the 6th day of January 2020 entered into a contract with the defendant for the purchase of Motor Vehicle Registration No. UBC 893B Toyota Hiace. On the same day, the plaintiff paid to the

defendant a sum of **Ugx 28,000,000/=** being the contractual price and a sales agreement was consequently entered between the two parties. The plaintiffs took possession of the vehicle immediately and thereafter commenced the process of transferring ownership. That as required by URA, the plaintiffs requested the 2nd defendant to write a consent authorizing URA to effect transfer of the said motor vehicle but the second defendant refused. On the 13th day of February 2020 the said Motor Vehicle was impounded while it was parked in front of Lira market and eventually got sold by Majimoto auctioneers & Court Bailiffs on 20th June, 2021. Once the matter was filed in this court, the two defendants ignored it and an interlocutory judgment was entered, the reason for the formal proof.

[3] The following five issues were framed by the plaintiff:

- 1. Whether the plaintiffs are entitled to an award of general damages**
- 2. Whether the defendants are liable to pay punitive, aggravated and exemplary damages**
- 3. Whether the defendant is liable to pay interest on Ugx 28,000,000**
- 4. Whether the defendant is liable to pay interest on general damages, punitive, aggravated and exemplary damages**
- 5. Whether the plaintiff is entitled to costs of the suit**

- [4] Before resolving the issues framed I noted that there was no issue framed specifically in respect of special damages. Similarly, in the written submissions the aspect of special damages was not addressed and I wonder why. May be it was an oversight. However, I found abundant evidence on record to prove that the defendants were paid Ugx 28,000,000/= as the purchase price of the motor vehicle forming the subject matter herein which they have never paid back since the said motor vehicle had been removed from the plaintiffs and sold off. Accordingly, it is hereby ordered that the defendant pay back to the plaintiffs the said amount of Ugx 28,000,000/= constituting special damages.

Issue one: Whether the plaintiff is entitled to an award of general damages

- [5] It was submitted for the plaintiff that general damages are the direct natural or probable consequences of the wrongful act complained of and include damages for pain, suffering, inconvenience and anticipated future loss. See **Storms Vs Hutchinson [1905] AC 515** and **Kabona Bothers Agencies Vs. Uganda Metal Products & Enamelling Co. Ltd [1981-1982] HCB 74.** That upon impounding and the eventual sale of the motor vehicle the plaintiffs lost the car hire business for which the vehicle in question had been purchased and consequently lost earnings of Ugx 350,000/= which they were

being paid per trip. As such, the actions of the defendant have caused the plaintiff a lot of mental anguish and suffering and loss of business thereby entitling the plaintiff to general damages.

- [6] 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".

- [7] It has been submitted that the plaintiff experienced a lot of inconvenience as regards the defendant's conduct. General damages are compensatory in nature and are expected to return the plaintiffs to some satisfaction as far as money can do. See **Takiya Kashwahiri & Anor Vs Kajungu Denis, C.A.C.A No. 85 of 2011**. I therefore find it deserving to award the plaintiff general damages of Ugx 10,000,000/= in order to try and return the plaintiffs to some satisfaction for all the inconvenience suffered as submitted hereinabove. See **Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305** and **Hadley Vs Baxendale (1894) 9 Exhc 341**.

Issue two: Whether the defendants are liable to pay punitive, aggravated and exemplary damages

- [8] Exemplary damages are awarded to punish the defendant and deter them from repeating similar conduct. The court needs to consider the conduct/behaviour of the defendant in awarding exemplary damages. See **Besimira Moses Vs The Attorney General Civil Suit No. 143 of 2015.** The defendant's conduct herein comes off as one done with impunity and utter disregard of the rules governing contracts. Upon payment of the full purchase price by the plaintiffs, the defendants ought to have enabled fast and easy transfer of the property to the plaintiff. This they failed to do and later on the car was impounded and sold. This seems to suggest that they sold the motor vehicle to the plaintiffs well aware that the same was subject to execution proceedings. This is further compounded by the failure/refusal of the defendants to respond to the claims made against them in this court. Given the conduct of the defendants towards the plaintiffs in this whole transaction, I find an award of a sum of Ugx 6,000,000/= to be suitable under this head.

Issue three: Whether the defendant is liable to pay interest on Ugx 28,000,000/=

Issue four: Whether the defendant is liable to pay interest on general damages, punitive, aggravated and exemplary damages

- [9] I will deal with **issues 3 and 4** concurrently as they both touch the issue of interest.
- [10] The award of interest is discretionary and the basis of such an award is that the defendant has kept the plaintiff out of his money thereby denying them use of it as such the plaintiff ought to be compensated accordingly. See **Pinnacle Finance Limited Vs. Kaddu Godfrey, HCCS No.94 of 2015** and Section 26(2) CPA. The plaintiff prayed for 40% interest from the date of breach till payment in full. The general principle governing the award of interest is premised on the fact that the defendant has kept or taken and or used the plaintiff's money and benefited out of it. See **Siecto Vs Noble Builders SCCA No.31 of 1995**. The transaction between the plaintiffs and the defendants was of a commercial and business nature and the defendants have retained the plaintiff's monies since 2020 and as a result the plaintiffs have lost use for the same. The plaintiff is therefore entitled to interest on the damages awarded.
- [11] **Section 26 of the Civil Procedure Act** states;

“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.”

- [12] In awarding interest, Courts have been 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.224 of 2011**. A plaintiff is entitled to such a rate as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any further economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due. The determination of award of interest is discretionary. Following the above discourse and guidance, the court finds a **rate of interest of 6%** on the sums awarded herein to be just and fair and is accordingly imposed. The rate shall apply to the special damages awarded from the date of 13/02/2020 when the motor vehicle was impounded and the general damages and punitive damages from the date of judgement.
- [13] The plaintiff also prayed for costs of the suit under Section 27(1) and (2) of the CPA. The award of costs is discretionary and they generally follow the event unless for good reason

court directs otherwise. I see no good reasons to disentitle the plaintiffs in this case from an award of costs of this suit.

- [14] Since the plaintiff has succeeded on all issues in the case, the court sees no compelling and justifiable reasons for not awarding him costs of the suit as prayed. See National Pharmacy Ltd (supra) and Jenniffer Rwanyindo Aurelia & Anor Vs School Outfitters (U) Ltd, CACA No. 53 of 1999.

Section 27 (1) of the CPA is instructive on the matter and states:

“(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 courts 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”

Accordingly, the plaintiff is awarded costs of the suit.

- [15] **Resultantly**, upon the plaintiffs proving their case on a balance of probabilities, this Court enters judgement against both defendants, jointly and severally, and makes the following **orders;**

- a. **that the defendant pays Ugx 28,000,000 being the purchase price for the motor vehicle (Special damages)**

- b. that the defendant pays to the plaintiff Ugx 10,000,000/= as general damages;
- c. That the defendant pays to the plaintiff Ugx 6,000,000/= being punitive/exemplary damages.
- d. that the defendant pays interest of 6% on (a) above from date of breach till payment in full and on (b) and (c) from date of judgment till payment in full.
- e. that the defendant pays the costs of this suit.

Dated, signed and delivered at Lira this 22nd day of August,
2023



Duncan Gaswaga

JUDGE