

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL APPEAL NO.14 OF 2012

IMPERIAL ROYALE HOTEL LTD:.....:APPLICANT

VERSUS

OCHAN DANIEL:.....: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

This is an appeal from the judgment and orders of the Magistrate Grade 1 of the Chief Magistrate Court of Mengo. The appellants are

1. Imperial Royale Hotel Ltd.
 2. Rashid Doka
 3. Gariyo Henry, and;
 4. Birungi Hassan,
- all represented by MMAKS Advocates.

The respondent is Ochan Daniel represented by Mamawi, Wamimbi & Co. Advocates.

The background to this appeal is that it was alleged that on 2nd April 2009, the first appellant hosted a workshop organized by the East African Community Arusha. During tea break, the second and fourth appellants while on duty found the respondent alone in the hall and requested him to identify himself. That he failed to do so and he was then taken to a room where he claims he was beaten, tortured and falsely imprisoned by the second, third and fourth appellants in their course of employment of the first appellant thus making it vicariously liable.

The respondent successfully sued the appellants jointly and severally and the court awarded the respondent UGX 40.000.000= in a lump sum award of general, exemplary and punitive damages. The appellants were dissatisfied with the orders of the trial court hence this appeal.

The grounds of appeal as contained in the memorandum are as follows:

1. That the learned trial Magistrate erred in fact and in law in holding that the respondent was identified by one Steven, whose evidence was not on record, thereby erroneously holding that the respondent's detention was not justified.
2. The learned Magistrate erred in not properly evaluating the evidence of Michael Opolot which was full of inconsistencies and lies.

3. The learned Magistrate erred in holding that the first appellant was vicariously liable for acts of the second, third and fourth appellants whose actions were not in any way connected to their employment.

4. The learned Magistrate erred in awarding special damages of UGX 1.800.000= for supplementary diet and UGX 1.300.000= for special meals which damages were not backed up by documentary evidence or medical evidence.

5. The learned Magistrate erred in law in awarding a sum of UGX 40.000.000= to the respondent which sum is unjustifiably excessive and erred by relying on the respondent's standing which was not testified to in arriving at the said award.

6. The learned Magistrate erred in law in making a universal award of general damages, aggravated damages, punitive damages and exemplary damages yet each head of damages is awardable in different circumstances and upon evidence being adduced to warrant such award.

The appellant proposed that-

- (1) This appeal be allowed and the respondent's suit be dismissed with costs.
- (2) Costs of this appeal and the court below be provided for.

At the hearing of this appeal, respective counsel were allowed by court to file written submissions in support of their respective cases.

I have considered the said respective submissions. I have also studied and re-evaluated the evidence adduced during the lower court's trial. I have related the respective counsel's submissions to the record.

I will go ahead and decide this appeal starting with grounds 4 and 5 together.

According to learned counsel for the appellants, the learned trial Magistrate exceeded his jurisdiction when he awarded 40.000.000= as extra damages to teach the appellants a lesson which would bring sanity to the hotel sector, a sector which is supposed to handle guests with courtesy. That the concept of extra damages is unknown in law. That the extra damages were awarded in addition to nothing. Further that by awarding a lump sum of damages the learned Magistrate acted erroneously.

Learned counsel for the appellants further submitted that by awarding 40.000.000= the learned Magistrate Grade 1 exceeded his jurisdiction which is 20.000.000=.

In reply, learned counsel for the respondent submitted that the learned trial Magistrate Grade 1 was right to award 40.000.000= because of the respondent's social standing and for the tort committed by the appellants was grave.

Regarding the lump sum award of damages, learned counsel for the respondent submitted that should be looked at considering whether it was legitimate in substance rather than the technicality of a universal award. That the appellants have failed to fault the learned trial Magistrate on what wrong principle he applied in awarding damages that are discretionary depending on the nature of the offence.

According to the judgment of the lower court, the learned trial Magistrate made an award of 40.000.000= as extra damages in addition to 1.800.000= for supplementary diet and 1.300.000= for special meals. This made a total award in the head suit of UGX 43.310.000/= (fourty three million three hundred ten thousand only).

As rightly submitted by learned counsel for the appellants, the concept of "*extra damages*" is unknown in this jurisdiction. Damages are general, aggravated, exemplary, punitive, special and/or nominal. The award of an unknown head of damages was erroneous. Secondly, the learned trial Magistrate christened it "extra" yet it was being awarded in addition to nothing.

Further to the above, this court has noted that the trial Magistrate made a lump sum award of the damages and as rightly submitted by learned counsel for the appellants, this was also erroneous. Different heads of damages apply to different situations and different considerations apply under each head.

I don't agree with learned counsel for the respondent that this error should be ignored because it is a technicality. Whereas an award of damages is discretionary, this discretion has to be exercised judiciously and within the known legal principles governing the award of different heads of damages.

Another error committed by the learned trial Magistrate was to award the sum of UGX 40,000,000= since this figure clearly exceeds his pecuniary jurisdiction. The pecuniary jurisdiction of a Magistrate Grade 1 is provided for under S. 207 of the Magistrates Courts Act.

Under S. 207 (b);

“a Magistrate Grade 1 shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings.”

This is the law which creates the Civil Jurisdiction for a Grade 1 Magistrate in Civil matters. When a Grade 1 Magistrate makes an order awarding general damages the sum of which exceeds the monetary jurisdiction of 20.000.000= (twenty million) set by law under S. 207 of the Magistrates Courts Act, such Magistrate would not be exercising jurisdiction vested in him. The monetary jurisdiction of 20.000.000= provides the ceiling beyond which the total awards should not exceed.

By awarding a total of 45,610,000= the learned trial Magistrate acted illegally rendering his judgment void for want of jurisdiction.

Anything done by a court without jurisdiction is a nullity and must be set aside on appeal.

Consequently I will find that the learned trial Magistrate erred not only in awarding damages under an unknown head but also in exceeding his pecuniary jurisdiction. The resolution of grounds 4 and 5 disposes of this appeal. I need not delve into resolving the other grounds because with the above finding, the entire lower courts judgment will collapse.

I will allow this appeal and set aside the judgment of the lower court with costs to the appellants in the appeal.

Stephen Musota

J U D G E

27.08.2014