

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CIVIL APPEAL NO. 0023 OF 2014
(Arising from Kamuli Civil Suit No.083 of 2013)

KWEKIRI JOSEPH NTUYO ::::::::::::::::::::
APPELLANT

VERSUS

NABIRYE MASITULA ::::::::::::::::::::
RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

This Appeal arises out of the Judgment and Orders of His Worship Semondo Benson - Magistrate Grade I sitting at Kamuli Court.

In that Judgment he ordered that the Defendant pays the Plaintiff Shs.50,000/= . No costs were ordered.

The grounds of appeal are that:

- (a) The Magistrate erred in fact and law when he made an order that the Defendant pays only Shs.50,000/=.
- (b) The trial Magistrate erred in law and fact not to award costs, special and general damages.

The Appellant had sued the Respondent for special damages, general damages, and the costs of the suit. This arose from an arrangement where he agreed with the Defendant to purchase her two trees and according to him he paid for them an amount of Shs.50,000/=.

The Defendant in breach of this agreement turned around, claimed for more money and when the Plaintiff refused, she sold the trees to another person who harvested them. The Defendant in her defence denied the claims and contended that the agreed price was shs.300,000/= of which the Plaintiff had paid only shs.30,000/= having taken away from her shs.20,000/= which had been part of the deposit.

On 20/2/2014, the matter came up for scheduling in accordance with Order 12 CPR.

The Plaintiff narrated his facts and the Defendant agreed that she had received shs.50,000/= and was willing to pay it back.

The magistrate without referring to any provision of Law to support his procedure, summarily ordered the Defendant to pay the Plaintiff shs.50,000/=. The Appellant came to this Court for redress.

I have considered the proceedings and procedure adopted by the trial magistrate.

I suppose the magistrate considered the Defendant's accepting to refund Shs.50,000/= as an admission. The Law is now settled that an admission has to be clear and unequivocal.

What the Defendant accepted did not amount to an admission of the Plaintiff's claim which had other claims of special and general damages as well as costs.

Even if it were an admission, the magistrate should have proceeded under **Order 13 rule 6 CPR.**

It provides as follows:

“Any party may at any stage of the suit, where an admission of facts has been made, either on the pleadings or otherwise apply to the Court for such Judgment or order as upon the admission he/she may be entitled to, without waiting for the determination of any other question between the parties; and the Court may upon the application make such order, or give such Judgment, as the suit may think just.”

The Magistrate in short should have entered Judgment on admission for the sum of shs.50,000/=.

He should have then gone ahead and fixed the suit for hearing, to determine the rest of the claims.

When he failed to award costs in any event, he should have given reasons why he was denying the Plaintiff costs if he thought his decision was the final determination of the suit.

I find that the way he handled this matter was arbitrary and perfunctory to say the least.

I accordingly set aside the decision of the trial Court and order that the case be tried again before a different magistrate.

The file is to be remitted to the Chief Magistrate for re-allocation of the case for proper trial.

I will not award costs against the Defendant for the Appeal as the fault causing this appeal cannot be attributed to her.

Each party will meet their own costs of this appeal.

Godfrey Namundi

Judge

16/12/2014

16/12/2014:

Parties in Court

Court: Judgment read in open Court.

Godfrey Namundi

Judge

16/12/2014