

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-CA-0017-2013
(ARISING FROM BUKWO CIVIL SUIT NO. 009/2010)**

**LIMO NICK PERAS.....APPELLANT
VERSUS
JANET SABILA.....RESPONDENT**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

In this appeal, appellant raised six grounds of appeal. However counsel for appellant chose to abandon grounds 3, 4, and 5, and chose to argue them under grounds 1, 2 and ground 6.

Briefly the facts of this case were that the defendant/Appellant's goats entered into the garden of the plaintiff destroying her beans. The plaintiff sued the defendant (Appellant), and court decided in her favour to the effect that appellant pays shs. 250,000/= as value of the beans and shs.2.5 millions as general damages.

On ground 1, the learned counsel for appellant argued that the learned Trial Magistrate erred when she failed to evaluate evidence thereby reaching a wrong decision. He attacked the evidence for the plaintiff as being hearsay. He faulted the plaintiff's counsel for failing to call the witnesses who saw like the husband of the plaintiff and the son called Sunday. He further attacked the method of

assessment for damages which put the figure at shs.250,000/= for value of beans destroyed and shs. 2. 5million as general damages.

The duty of the first appellate court is to review the evidence. See ***Pandya v. r (1957) E.A. 336.***

The appellate court of first instance has the duty to subject the evidence of the lower court to a fresh and exhaustive scrutiny and draw its own conclusions mindful of the fact that the trial court had the advantage of listening to the witnesses during the trial.

I have carefully gone through the lower court record. I do find on record that four witnesses testified for the plaintiff.

PW.1 Janet Sabila told court that on 2nd April 2010- a Good Friday she personally went to the garden and saw the goats there. They were six goats in number. She was with her husband with whom they drove the goats to their home and kept them in the house, while they went to look for the LCs.

On 3rd April 2010, in the evening the defendant picked the goats from the plaintiff's home. When confronted about the destruction the goats had done, he refused to pay. Plaintiff said she involved an Agricultural officer to assess the damage.

PW.2 Patrick Male confirmed the fact that PW.1 reported the fact that defendant's goats had destroyed her crops. The defendant came with police and impounded the

goats, before LCs could intervene. It was agreed that defendant pays 40kgs of beans to plaintiff but plaintiff was dissatisfied.

PW.3 Chessang Justus, was only told by PW.1 what had transpired.

PW.4 Koti Benard, saw defendant go to collect the goats from plaintiff's home.

In defence four witnesses testified. **DW.1 Limo Perass** denied that his goats never strayed at plaintiff's garden, saying they have a grudge.

DW.3 Chemadwa Rogers claimed to have worked for D.1 and that no animals ever strayed to plaintiff's crops.

DW.3 Chelangat Carolyne, said that on 1st and 2nd April 2010, the goats did not stray and were at home being kept by DW.11 and that plaintiff had never impounded the goats.

The trial Magistrate in assessing that evidence went at length to describe other factors like demeanour of the witnesses, mode of answering questions and general behavioural trends depicted during the trial by each witness. He concluded by believing the witnesses for plaintiff as more straight forward and truthful. He rejected evidence of the defence as being elusive.

A trial court has the advantage of listening to the finer details of a case and the trial Magistrate holds the advantage of hearing the answers and testimonies of the witnesses, look at them and make conclusions. In this case looking at the record of proceedings am inclined to agree with the trial Magistrate's assessment that

defence evidence was elusive. DW.3- wife of DW.1 totally denied every detail about this episode even denying the obvious facts that the goats had been impounded and only retrieved by her husband using aid of police. See evidence of (PW.1, PW.2, PW.3 and PW.4). There is no explanation from the defence evidence what these goats were doing in plaintiff's home on 1st and 2nd April.

This evidence was correctly assessed and admitted.

The trial Magistrate's assessment of the evidence and conclusions therefore is not in error as alleged by the plaintiff. I find that the learned trial Magistrate correctly evaluated the evidence thereby reaching a correct decision. Ground 1 therefore fails.

Ground 2

The learned appellant's counsel averred that plaintiff was not entitled to shs.250,000/= as value of damaged beans and 4.5 million as damages since she suffered no loss and damage.

Counsel had argued under ground 1 that there was no basis for assessing the damaged beans since the Agricultural officer was not called to testify. However the lower court record has a report made by a site visit team which put the destroyed estimated harvest at 200kgs.

The court has discretion to take notice of current market rates and issue reasonable compensation to victims of wrongs. If a kilo of beans is valued at current market rate of 2,500/= am sure the Magistrate must have taken the market rate as at that

time of about shs 1,750/= and multiplied it by 200kg to get shs 250,000/=. I find that figure reasonable.

As for the amount of damages put at shs. 2,500,000/= no reasons for this award were given on record.

I have examined the circumstances of the case and do not find any basis for the award at the said rate since the plaintiff's damaged crops were to be compensated by the shs. 250,000/= and court found that she wasn't defamed hence suffered no personal injury. Damages are compensatory in nature and are designed to put the claimant into the position in which he would have been but for the tort committed. An injured claimant will receive a sum deemed to be sufficient to compensate him for the type of injury he had received in terms of loss of quality of life and pain and suffering. He will also receive a sum for financial loss flowing from the injury- (see Civil Litigation – Legal Practice Course Guides- Craig Osborne 2006-2007 at page 3).

In this case there is the discomfort subjected to the plaintiff by action of keeping the goats in her home for the period between 1st and 2nd April 2010. The anxiety which went with it, through attempting to settle the case with neighbours, Agricultural Officer and LCs, which greatly took away her valuable time meant for other meaningful activities. The court will recognize that normally peasant agriculture is done between 6p.m- 1p.m and 3pm – 6 pm, a total of 12 hours per day. She lost this time for the 2 days, totaling to 24 hours of loss.

Plaintiff is assumed to have lost 24 hours of active peasant time while tending the goats of defendants. The amount she would have earned could be equivalent to production of a small garden of 50 metres by 50 metres which could grow about 5000 crops of beans and perhaps harvest other 400 kgs of beans. Taking the same rate of market value, I would therefore allow plaintiff damage of shs 700,000/=. The award of shs 2,500,000/= as damages is therefore set aside and replaced with an award of shs 700,000/= as damages. The ground therefore succeeds in part as above.

On ground 6, the reasoning in grounds 1 and 2 show that plaintiff had proved her case on the balance of probabilities. The trial Magistrate was therefore right to make findings as he did on damages and costs subject to the revision of this court on the quantum of damages. I find this ground unnecessary and find that plaintiff was entitled to the costs of the suit. The ground therefore fails.

Finally for reasons as above, the appeal fails on all grounds save ground 2 in respect of the amount of damages awarded. The appeal is accordingly dismissed with costs to Respondent. I so order.

Henry I. Kawesa

JUDGE

09.04.2014