

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 056 OF 2015

LEADS INSURANCE COMPANY :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

ATTORNEY GENERAL :::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON.JUSTICE STEPHEN MUSOTA

JUDGMENT

Through M/s Mugenyi & Co. Advocates, Leads Insurance Limited filed this suit against the Attorney General for:

- a) A declaration that the defendant through its agents, servants, and/or employees by failing and/or refusing to comply with the Court Order dated 22nd January 2015 arising from Misc. Cause 03 of 2005 acted illegally and unconstitutionally by rendering the courts of law ineffective.
- b) A declaration that the defendant by refusing to surrender the plaintiff's titles to them are acting unconstitutionally by interfering in their right to free use and/or enjoyment of their property.
- c) A declaration that the defendant by refusing to release the plaintiff's titles has deprived the plaintiff of its land and/or interest in land comprised therein.
- d) An order that the certificate of titles for the fore mentioned property be surrendered to the plaintiff or to the nominees of the plaintiff.

- e) An order of compensation of loss of income totaling to a sum of 2,104,607,693/- resulting from the refusal of the defendant to comply with a Court Order and by refusing to release the plaintiff's titles.
- f) Special and general damages for breach.
- g) A permanent injunction restraining the defendant and/or their agents from interfering with the plaintiff's possession to their titles and/or developing the suit land and/or in any manner interfering with the same.
- h) Costs of the suit.
- i) Any other relief deemed appropriate by the court.

According to the plaint, the facts constituting the cause of action against the defendant are as follows:

- a) At all material times, the plaintiff has been and is the registered proprietor of land comprised in certificates of titles namely of Kyadondo Block 232, Plot 1688, Kyadondo Block 217 Plot 843, Kyadondo Block 253 plot110, leasehold register volume 1986 folio 6 plot 810 Bukoto. Photocopies of the titles are hereto annexed and marked "A" to "D".
- b) That on the 13th day of November 2012, Police Officers from the CID headquarters and Kireka Special Investigations Unit led by one Wanyoto Herbert carried out a search on the plaintiff's office situate on King Fahd Plaza, plot 52 Kampala Road, 1st floor.
- c) That they presented a Search Certificate dated the same day and in the process impounded a number of documents including the said land titles for Kyadondo Plot, 1685, Kyadondo Block 217 Plot 843, Kyadondo Block 253 Plot 110 and LRV 2572 Kyadondo Block 244 Plot 1971 all belonging to the pl. A copy of the Search Certificate is hereto annexed and marked "E".
- d) That todate, the defendant having seized the said title from the plaintiff company , has continuously held onto the said titles and that the same defendant has never preferred any criminal charges against the plaintiff company and neither has the plaintiff company been the subject of any criminal investigation.

- e) The plaintiff has continuously requested the defendant to return the said titles to enable them to operate their business but the defendant's agent, servants or employees in their course of duty elected to ignore those requests.
- f) That on 8th December 2014, the Insurance Regulatory Authority wrote to the plaintiff demanding that the plaintiff company secures its titles from the office of the Directorate of Public Prosecution to enable it to process its professional license for the year 2015. A copy of the said letter is hereto annexed and marked "F"
- g) That the plaintiff shall aver that by that letter dated 8th December 2014, and subsequent letters, the Insurance Regulatory Authority had decided to de-recognize the investment properties of the plaintiff company because the Director of Public Prosecution was in possession of their titles. A copy of that letter is hereto annexed and marked "G" to "P".
- h) That plaintiff shall contend that the Insurance Regulatory Authority premised the decision on a computation of the solvent position of plaintiff company at Ushs.1,408,518,000 having failed to recognize the value of Ushs.3, 580,000,000 being the value of the properties.
- i) That the plaintiff tried to communicate to the same office of the Directorate of Public Prosecutions to release the said titles but the said office refused to respond to the request and all other attempts eventually failed.
- j) Subsequently the Insurance Regulatory Authority refused to grant the plaintiff an insurance license for the year 2015 on the ground that it doesn't have title deeds to its properties.
- k) That the said revocation of the plaintiff's license was advertised in the New Vision dated 5th January 2015 to the detriment of the applicant's business. A copy of the said publication is hereto annexed and marked "Q".
- l) This press release was subsequent to an earlier press release in which the licensed insurance companies were advertised and this was adverse to the interest of the plaintiff as the respondent further warned the public to deal with only licensed insurance players.
- m) That the plaintiff avers that the said revocation of the applicant's license because of the seizure of the titles of the applicant has had adverse and disastrous consequences

on the applicant's insurance business in so far as the applicant has been a going concern without any insolvency problems.

- n) That as a result of the revocation and or failure to renew the said license, a lot of business of the plaintiff company was lost as a number of their clients refused to renew their policies for the year of 2015 and the plaintiff company was unable to issue new insurance policies.
 - o) The plaintiff lodged an application under Miscellaneous Cause No.0003 of 2015 in the High Court (Civil Division) to compel the defendant, the director of Public Prosecutions and the commandant of Kireka Police (SIU) to release the said titles to enable it to secure its license for the year 2015.
 - p) That on 22nd January 2015, the High Court ordered the defendant, the director of public prosecutions and the commandant Kireka Police (SIU) to release the aforementioned titles to the Insurance Regulatory Authority within seven days from the date of the order. a copy of the court order is hereto attached and marked "R".
 - q) That on receipt of the said order, the office of the Attorney General and the Directorate of Public Prosecution and the commandant of Kireka Police (SIU) elected not to comply with the court order. a copy of the order acknowledged S and T.
 - r) That the plaintiff avers that by reason of the defendant, the directorate of public prosecutions and commandant of Kireka Police Station refusing to release the titles, they have suffered loss of business and income by virtue of the insurance regulatory authority denying them insurance license for the year 2015.
5. The plaintiff shall aver and contend that the servants/agents/employees of the defendant have acted illegally and unconstitutionally by holding on to their titles aforementioned and by refusing to comply with the court order that compelled them to release the said titles to the Insurance regulatory Authority.
6. The plaintiff shall further aver that their constitutional right to property is being violated especially when the respondents failed to state and or disclose the reason of holding on to their titles. And more so that there was no criminal behavior on the part of the plaintiff company for the defendant to rely on to hold onto those titles.

7. The plaintiffs hold the defendants vicariously liable for the high handed and illegal deeds of these agents, servants, employees and officers of the state as at the material time they were acting in the course of their employment.
8. The plaintiffs shall contend that defendant by holding onto their titles has contravened Article 26, 40(2) and 128(3) of the Constitution which entitles them to the right to property, right to carry out their profession and protection from the court in case of derogations of their rights.
9. By reason of the matters aforesaid, the plaintiff sustained great anxiety and has suffered loss and special damages and as a result of the said action the plaintiffs and the defendants knew and intended that substantial loss of earning and expense would result.

The plaintiff pleaded particulars of damage as loss of business arising from failure to renew and cancellation and/or issuing new policies for the year 2015.

10. The plaintiff also claim exemplary and aggravated damages by reason of the fact that the conduct of the servants of the defendant was arbitrary, oppressive and unconstitutional. As a result the plaintiff has been put to anguish, mental suffering and inconvenience for which it claims general damages.

In the written statement of defense, the defendant denied any wrong doing contending that he has no knowledge of the plaintiff's loss and claim for damages as set out in the plaint and the plaintiff shall be put to strict proof of the claim.

Further that the defendants' agents never acted illegally or unconstitutionally and therefore the suit should be dismissed with costs.

The agreed issues for determination are:-

1. Whether the defendants' agents/employees by refusing to comply with the Court Order dated 22nd January 2015, the defendant acted in contempt of court, illegally and unconstitutionally.
2. What remedies are available for the plaintiff.

At the trial of the suit, the plaintiff called one witness Mr. Sam Phiri the CEO of the plaintiff company while the defendant called two witnesses to wit Mr. Vincent Wagana an Acting Assistant Director Public Prosecution and Mr. Wathum Benson a Detective Superintendent of Police.

I have considered this case as a whole, studied the evidence on both sides and all the documentation exhibited during the trial as well as the respective submissions by both Mr. Mugenyi for the plaintiff and Ms. Kiyingi for the defendant.

From the evidence on record, it is not in dispute that a Court Order dated 22nd January 2015 was issued by Hon. Justice Yasin Nyanzi in the following terms:

*This application coming for final disposal on this day of 22nd January 2015 before **His Lordship Hon. Nyanzi Yasin** of the High Court of Uganda Civil Division at Kampala in the presence of **Mr. Yese Mugenyi** Counsel for the applicant and **Ms. Sandra Mwesigye** Counsel for the 1st, 2nd, and 3rd respondents.*

IT IS HEREBY ORDERED that:-

- a) The duplicate certificates of titles namely Kyadondo Block 232 Plot 1685, (b) Kyadondo Block 217 plot 843, (c) Kyadondo Block 253 plot 110, (d) Leasehold Register Vol. 2572 folio 20 of plot 1971 Kyadondo Block 244, (e) Leasehold Register Vol.1986 folio 6 Plot 810 Bukoto; all titles in the names of the applicant and being

- retained by the Director of Public Prosecutions be released to the Uganda Insurance Regulatory Authority within seven days of this order.*
- b) That the Director of Public Prosecution shall have free access to the said aforementioned titles during and at all times of trial and investigation of the criminal case against the shareholders of the company.*
 - c) Duplicate titles will remain with the Uganda Insurance Regulatory Authority so long as investigations and the criminal case remain pending.*
 - d) That the applicants/directors and any other person shall not transfer their interests in the said titles while the investigations and criminal case are pending except with a consent of the Insurance Regulatory Authority and the Attorney General.*
 - e) Any transfer made in violation of this order shall be void.*
 - f) Each party shall bear its costs.*

It was ordered that the defendant and their agents release titles belonging to the plaintiff to the Insurance Regulatory Authority. The said order was served onto the Attorney General, the Commandant Kireka Special Investigations Unit and the Director Public Prosecution. It is not disputed that the court order was not varied, appealed against or set aside by any court of law on application by either parties.

The evidence on record also indicates that the said order was never complied with. All attempts sanctioned by this court for negotiations to secure compliance were futile as the Director Public Prosecution chose to defy it and to insist as shown by the evidence of Mr. Wagona the Assistant Director Public Prosecution that their office is not subject to control or supervision by any person or authority.

In her submissions Ms. Kiyingi echoes Mr. Wagona's evidence that the land titles were confiscated during the investigations of the pension scam and that it would be premature to release the same for the benefit of the plaintiffs. That investigations are still ongoing and the

titles cannot be released and the Director Public Prosecution intended to renew the order to hold onto the titles.

In the instant suit, the plaintiff sought for remedies under Article 50 of the Constitution challenging the defiance of the Court Order cited above. And questioning the constitutionality of the action of the defendants.

Article 2 of the Constitution provides that the constitution is supreme and it enacts that:

1. *This constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.*
2. *If any other law or custom is inconsistent with any of the provisions of this constitution, the constitution shall prevail and that other law or custom shall to the extent of inconsistency be void.*

I therefore agree with the submission by Mr. Mugenyi that judicial authority is institutionalized under Chapter 8 of the Constitution and in particular Article 126. This article states explicitly that Judicial Authority in Uganda is derived from the people and is vested in the courts which are enjoined to control and check any abuse of power by the other two arms of state.

While exercising its authority, Court acts with independence impartiality, without fear or prejudice. This enables courts to protect any individual against any abuse of power. Therefore our constitution requires total compliance with court orders and no person or organ of the state may interfere with the functioning of the courts. *See: Article 128(1) & (2).*

To safe guard the independence of the judiciary and protection of basic rights of the individual and society, the constitution requires that all organs of state and all persons to whom a court

order or decision applies are bound by it. This obligation is embodied in Article 128(3) of the Constitution which provides that:

“(3) All organs and agencies of state shall accord to the court such assistance as may be required to ensure the effectiveness of the courts”.

From the facts of this case and evidence on record, it is apparent that the defendant failed in the above duty. An order of this court dated 22nd January 2015 was issued by court and served on various organs of state. The order was never complied with. The state and its organs elected to ignore that order. They did not challenge the court order neither did they appeal against it or have it varied. This was an act of defiance which erodes the independence and effectiveness of court. When the defendants’ witnesses testified in court, none attempted to expunge the act of non compliance but rather sought to justify their actions. They insisted that the plaintiff company was under the management of criminal suspects although they were aware that Hon. Mr. Justice Mugamba had issued a court order on 3rd March 2013 prohibiting the said persons from transferring their shares or participating in the management of the plaintiff company. No evidence was adduced in court to show that the plaintiff company was a subject of criminal investigation. Only its shareholders were being investigated. It is an obvious fact known by the defendant that the plaintiff company is in law a distinct entity from its share holders some of whom are under criminal investigations.

I therefore agree with learned counsel for the plaintiff that the court order was part of a legal process. Flaunting the order was an abuse of the legal process calculated to undermine the administration of justice thus exerting undue influence on the independence of the judiciary.

According to DW1, the titles in question were in possession of the police at Kireka and therefore not with the Director Public Prosecution. The evidence by the defense shows the Director Public Prosecution has influence and control over the investigations done by police at Kireka. Therefore

their possession of the titles did not negate the function of the Director Public Prosecution under Article 120(4) of the Constitution which provides that:

“The functions conferred upon the Director Public Prosecutions under clause 3 of this article be exercised by him or her in person or by officers authorized by him or her in accordance with general or specified instructions.”

In exercising his functions, the Director Public Prosecution is enjoined to have regard to public interest, the interest of the administration of justice and the need to prevent abuse of legal process. By refusing to comply with the Court Order to release the titles of the plaintiff company the defendant was in essence denying the plaintiff the right to use their property which would involve pledging them in the Insurance Regulatory Authority to secure a business license for its business in breach of Article 40 of the Constitution. By failing to and/or refusing to comply with a Court Order, the defendant was definitely acting unconstitutionally.

I will not leave this issue without emphasizing that it is incumbent upon everybody concerned to ensure that court orders are complied with. This emphasis is derived from the decision of Hon. Justice Irene Muryagonja (as she then was) in *Stanbic Bank Vs Uganda Revenue Authority Misc. Application 42 of 2010* arising out of *HCCS 479 of 2010* wherein she reiterated the general principle regarding respect of Court Orders as follows:

“A party who knows of an order, whether null, or regular or irregular cannot be permitted to disobey it..... It would be most dangerous to hold that the suitors or their solicitors, or themselves judge an order as irregular..... The course of a party knowing of an order which was null and irregular and who might be affected by it is plain. He/she should apply to the court that it might be discharged. As long as it existed it must not be disobeyed”.

Also in *Armrit Goyal Vs Harrichand Goyal & Another CA 6 of 2008*, the court of appeal held as follows:

“A Court Order is a Court Order. It must be obeyed as ordered unless set aside or varied. It is not a mere technicality that can be ignored, if we allowed Court Orders to be ignored with impunity, this would destroy the authority of the Judicial Orders which is the heart of all judicial systems. Those who choose to ignore them do so at their own peril.”

I found nothing wrong with the order of this court especially when it took into account the interest of all the parties to it especially in paragraphs (b), (c), (d) and (e) of the order.

This means that the court was not insensitive to the concerns of the defendants. It was therefore absurd that the defendant merged the interest of the company with those of the shareholders individually. The crimes of the shareholders cannot be imputed on the plaintiff company and even in the event of conviction of the shareholders, the state cannot confiscate the land titles in the names of the plaintiff company. Failing to release the titles as ordered, the defendant acted unconstitutionally because it denied the plaintiff the rights to use its property.

Issue: What remedies are available for the plaintiff?

The pertinent issue before this court is whether defiance of a court order occasioned loss to the plaintiff.

In the instant case, the plaintiff claims for punitive damages. Punitive damages are damages awarded when the defendant has acted with recklessness, malice or deceit. They are a type of damages intended to penalize the wrong doer to make an example for others.

According to the defendant it is acting with any malice or deceit and does not have any personal vendetta against the plaintiff company. That the suit property is held by the agents of the

defendant in the course of their duty and while dully executing their mandate intended to save public resources. That the claim for punitive damages be disallowed.

Further on the claim for general damages, the defendant avers that the plaintiff is not entitled to general damages because they have not been proved and in the alternative the amount claimed is excessive and unconscionable.

Regarding special damages, the defendant says that the plaintiff has not specifically pleaded and proved the same. The plaintiff submitted to the contrary.

After a careful consideration of the evidence on record, I am satisfied that the plaintiff is entitled to general damages for the inconvenience they have been put into for not using their properties to secure a license since the institution of this suit. Award of general damages is in the discretion of the court and will always be presumed the natural consequence of the actions of the defendant. In assessing general damages courts are guided by *inter alia* the value of the subject matter and the economic inconvenience that a party may have been through. See: **Uganda Commercial Bank Vs Kigozi [2002] 1 EA 447**

In the circumstances of this case, I am of the considered view that the plaintiff company should be paid general damages of UGX 200.000.000=. It is so awarded.

Regarding the claim for special damages, I do not agree with the submissions by learned counsel for the plaintiff company that they were pleaded and proved during hearing of this suit. All the parties were mindful of the fact that the plaintiff company was a business entity earning income. The income was substantiated by evidence adduced showing the income it had earned in the previous years or as published by the Insurance Regulatory Authority in its annual reports. The plaintiff company labored to show the loss that was occasioned to it. It lost its clients, the

insurers and business. The employees were laid off, the company was no longer able to collect receivables since it had no license yet it was denied to use its private property to secure a license.

The plaintiff's witness PW1 Sam Phiri informed court that the company stood to lose UGX 2,104,607,693= for the year 2015. This figure constituted the special damages claim. This figure was based on previous Insurance Regulatory Authority annual publications showing earnings of the plaintiff company based on and derived from audited reports. In the evidence given by PW1, it is revealed that the plaintiff company over a period of years had been earning a gross premium of UGX 4,847,840,000= for 2012, UGX 5,505,440,000= for 2011, UGX 4, 246,100,000= for 2010 and UGX 3,235,509,000= for 2009. The plaintiff projected to earn in 2015 UGX 2,104, 607,693=.

That the plaintiff company lost income was not controverted by the defendants in cross examination thus leaving the evidence of loss of earnings credible. Whereas this evidence draws sympathy to the plight of the plaintiff company, it falls short of proving that the plaintiff lost any income in the year 2015 since it did not operate for lack of a license. Special damages are restrictive and do not deal with estimates but rather with exact financial losses. They have to be measured with complete accuracy. Therefore although the plaintiff pleaded special damages, the same was not strictly proved by evidence that the loss was incurred and that it was a direct result of the defendant's conduct. Relying on previous earnings was so remote and speculative and not connected to the suit. I will agree with the defense that the claim for special damages has not been proved as required by the law.

As regards the claim for punitive damages, I am inclined to award it since the defendant has acted unconstitutionally and recklessly and since being the advisor of government, it ought to have advised its agencies to follow the law. It ought to have emphasized that in law a company is a distinct entity from its shareholders. It ought to have advised the agencies about the consequences of crippling a business entity because of the commissions or omissions of its

shareholders. For this malicious conduct, the defendant will pay punitive damages of UGX 300.000.000=.

Interest: The plaintiff prayed for interest at a commercial rate of 24%. It is however trite law that the amount of interest is at the discretion of the court. Learned counsel for the defendants suggested an interest at court rate in the unlikely event that the damages are awarded. In the circumstances of this case, I will award an interest of 10% per annum from the date of judgment until payment in full.

In the final result judgment is entered for the plaintiff for declaration that:

1. By the agents, servants and/or employees of the defendant failing and/or refusing to comply with the Court Order dated 22nd January 2015 arising from Misc. Cause 3 of 2005, the defendant acted illegally, unconstitutionally thus rendering courts of law ineffective.
2. By refusing to surrender the plaintiff/company's titles to the company, the defendant acted unconstitutionally by interfering with the plaintiff's company's right to free ownership and the right to freely enjoy their property.
3. The defendant should take immediate steps to release withheld titles to the Plaintiff Company or nominees of the plaintiff.
4. The defendant shall pay general damages of UGX 200.000.000= and punitive damages of UGX 300.000.000=.
5. The decretal sum shall carry an interest at 10% per annum from the date of judgment till payment in full.
6. The plaintiff shall get the taxed costs of this suit.

Stephen Musota

J U D G E

30.03.2016