

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 42 OF 2014

ARISNG FROM NAKASONGOLA CIVIL SUIT NO. 5 OF 2012

RUKOMBERWA YOKANA.....APPELLANT

V

NKWAYA ATANASI.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

Through his advocates Sowali Katamba & Co. Advocates , the appellant appealed the judgment of HW Mangeni Marion dated 3rd December 2014 on two grounds of appeal that I will revert to later in the judgment.

The respondent was represented by Namugowa & Co. Advocates.

Both counsel filed written submissions that I have carefully considered.

It is trite law that the duty of the first appellate court is to re-evaluate the evidence adduced in the lower court and arrive at its own conclusions on issues of fact and law. In **Fr. Narcensio Begumisa & 3 ors v Eric Tibegaga Civil Appeal No. 17 of 2002**, the Supreme court restated this duty and added that parties in the first appellate court are entitled to the appeal court's decision on issues facts and law.

The appellant sued the respondent in the lower court in tort for compensation for fourteen goats killed by the respondent's dog in March 2012.

I agree with counsel for the appellant that this is a common law tort classified under the scienter principle. The import of this principle is that the defendant is liable for damage caused by a domestic animal whose propensity to violence was within his knowledge .

In a paper titled Civil Liability of Animals written for the Law Reform Commission found at www.lawreform.ie , the authors discuss the different torts attached to damage or harm by

animals in English law. Under the rule in **Rhylands v Fletcher**, the principle is if a land owner brings a dangerous thing onto his land and it escapes and causes damage, the owner is liable.

The authors however, opine that a domestic cat or dog cannot be classified as dangerous under **Ryland v Fletcher** and so the more appropriate principle is the **scienter** principle. The case of **Quinn v Quinn 39 ILTR 163** is cited in support. In that case, the plaintiff's cow that was in an enclosure with the defendant's sows separated with a timber partition, were injured by the sows that broke out of their enclosure. The court found the defendant liable for the loss of cows and also found that the sows had previously killed cocks and hens, a fact within the knowledge of the defendant.

This common law principle was replaced by section 2 of the Animals Act of England in 1971. Our legal system still relies on some of these common law principles even though they may have been modified by statutory law in the country of origin.

The **Judicature Act in section 14(2)** empowers the High Court to exercise jurisdiction in conformity with written law, common law and doctrine of equity. The common law and doctrines of equity apply only where the written law does not apply.

Furthermore, section 14 (4) stipulates that

'the common law shall be in force only as far as the circumstances of Uganda and its people permit, and subject to such qualifications as circumstances may render necessary.'

To sustain an action against the respondent, the appellant had to prove on a balance of probabilities that the respondent's dog injured his goat or goats and that the respondent knew that his dog had propensity to attack domestic animals.

The appellant's case is that the respondent is a neighbor about 2.5 km away and on 12.3.2012 at approx. 2 p.m, he saw the respondent's dog injure his black and white goat after which he reported to the police and a Doctor. It was the appellant's evidence that the dog had earlier eaten more goats and the total eaten was now fourteen and that he was convinced the respondent's dog was the culprit.

According to the appellant, his son one time saw the dog injure his goat which occasionally fed from the respondent's land.

PW2 D/Sgt Kajura who received the report went to the scene and photographed the injured goat. He did not visit the respondent's home nor did he find the dog at the scene.

It was the appellant's case that the respondent had killed the dog on realizing there was a case.

That the plaintiff's dog was injured by a dog was confirmed by PW3 Doctor Eswagu Emmanuel a veterinary doctor who examined the dead goat soon after the incident.

The appellant adduced Pexh. 1, a judgment of HW Japyem dated 19th July 2012 in **Nakasongola Criminal Case No. 274 of 2012 Uganda v Nkwaya Atanansi** in which the learned magistrate observed at page 2 that

' I reasonably believe that in the absence of any grudge between the accused and complainant, it was pointless to bring the case against the accused.'

I have analysed the evidence on record. I am not able to believe witnesses of accused when they said accused had no dog. Evidence of DW1 is that he had a dog but it was so old and cannot move'.

The case was against the current respondent who was prosecuted for the injuries caused by the dog to the animals of the appellant but was acquitted of specific rash and negligent act of failing to take precautions against danger from an animal in his possession c/s 228(d) of the Penal Code Act. The respondent was acquitted because the section envisages danger to people and not to animals. While the respondent was acquitted, the magistrate found that he was the owner of the dog.

In his defense, the respondent denied owning a dog and denied he is a neighbor to the appellant as his land is 400 acres away. All his witnesses including DW1 Kalamuzi Benard DW2 Karangira Daniel and DW3 Rwamurungwa supported him.

From the above analysis, the denial by the respondent that he did not own a dog stands on shaky ground for various reasons.

First, the dog could not be traced because it had been destroyed.

Second, the respondent had admitted in the criminal trial that he owned an old dog and the trial magistrate had found that he was the owner of the dog that injured the appellant's goat. The judgment in the criminal trial was never appealed.

The appellant had seen the dog on several occasions and he knew it belonged to the respondent and he saw it injure his goat on 12.3.2012 and he immediately complained to the police.

The respondent's land was approx. 2 .5 km away, a short enough distance for a dog to traverse.

On whether the respondent knew the dog had propensity to injure other animals, the fact that it injured the appellant's goat raises a presumption that he had knowledge of its propensity to violence.

In any case, the appellant testified that it had previously injured his other goat and he had complained to the chairman(LC) and police.

The trial learned magistrate believed the respondent's case that he did not own a dog and that many people in the area owned dogs.

On a balance of probabilities, I find that the appellant proved that his goat was injured by the defendant's dog which makes him liable.

Special damages

The trial magistrate did not assess the damages she would have awarded had the appellant been successful as is the practice. I will therefore proceed to do so.

The appellant claimed 250,000/ per goat for fourteen goats as special damages making a total of 3,500,000/. He also claimed transport 1,000,000/ incurred on transportation of witnesses for the criminal case.

The appellant linked the loss of fourteen goats to the respondent's dog but he called evidence directly linking the dog to the goat that was injured on 12.3.2012 . In the absence of other

evidence e.g. photographs of injured goats with respect to ownership of fourteen goats allegedly killed by the dog, the claim with respect to thirteen goats, has not been proved.

The claim with respect to the one goat was sufficiently proved both by oral testimony of the appellant and his witnesses as well as Pexh. 2, a photograph of the dead goat.

A sum of 250,000/ is awarded as special damages for the loss of the goat.

With respect to transport refund of witnesses in a criminal trial, this claim is disallowed because transport for witnesses in criminal cases is the responsibility of government and not complainants.

General damages

The appellant suffered inconvenience and mental anguish. As a commercial farmer, the threat to his economic interests cannot be underestimated. He is awarded general damages of 1,000,000/.

I now turn to the grounds of appeal.

Ground one

The learned magistrate erred in law in holding that the appellant did not have a cause of action

The reason the trial magistrate dismissed the suit was that the appellant had not proved it on a balance of probabilities. The statement that he had not established a cause of action was superfluous and unnecessary since the magistrate had evaluated the evidence before arriving at a conclusion.

Ground two

The trial magistrate did not properly evaluate the evidence thereby arrived at a wrong conclusion.

I have re-appraised the evidence and found that the magistrate arrived at a wrong conclusion.

In the result, I allow the appeal, set aside the judgment of the lower court and substitute the following orders.

The appellant is awarded 250,000/ as special damages and 1,000,000/ as general damages.

Costs of the appeal and the lower court to the appellant.

DATED AT KAMPALA THIS 27th DAY OF SEPTEMBER 2016.

HON. LADY JUSTICE H. WOLAYO