THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL APPEAL NO. 007 OF 2017

(Arising from land matter No. FPT – 01 – CV – CS – LM – 037 of 2016)

CHONG QUING INTERNATIONAL

CONSTRUCTION CORPORATION.....APPELLANT

VERSUS

1. BAGUMA ABDULLAH
2. ITHUNGU SAIDAH
3. MZEE YUSUF **.....RESPONDENTS**
4. MASEREKA ASUMAN

BEFORE: HIS LORDSHIP HON. MR WILSON MASALU MUSENE

Judgment

The Appellant in the instant appeal, Chong Quing International Construction Corporation, brought this appeal after being dissatisfied with the decision of the trial Magistrate His Worship Oji Philips Esq. Magistrate Grade 1 of the Chief Magistrate's Court of Fort Portal at Bundibugyo delivered on the 12th December 2016 in a Civil Suit brought by the Respondents.

The grounds of the appeal are;

1. The learned trial Magistrate erred in law and fact when he held that Defence Exhibit 1 was a worthless document and thus arrived at the wrong conclusion and occasioning a miscarriage of justice to the Appellant in determining the case in favour of the Respondents.

2. The learned trial Magistrate erred in law and fact when he wrongly applied the doctrine of strict liability and found the Appellant strictly and entirely liable for the Respondents' alleged loss thus occasioning a miscarriage of justice.
3. The learned trial Magistrate erred in law and fact when he awarded UGX 15,000,000/= per plot as general damages in addition/as well as UGX 5,000,000/= to each of the Plaintiff's as compensation.
4. The learned trial Magistrate erred in law and fact in assessing the quantum of Ugx 15,000,000/= per plot as general damages and UGX 5,000,000/= to each of the Plaintiffs as compensation without the same being strictly proved thus occasioning a miscarriage of justice.
5. The learned trial Magistrate erred in law and fact in awarding interest of 12% on both general damages and costs thus occasioning a miscarriage of justice.
6. The learned trial Magistrate erred in law and fact when he failed to evaluate the entire evidence on record and therefore arrived at the wrong conclusion in determining the case in favour of the Respondents.

Brief back ground:

The Respondents allege that on the 4th day of February 2013, the Appellant excavated their land at City Square in Bundibugyo Town Council by dumping stones and soil on their crops which they had planted on four plots. The Appellant denied the Respondents' claim on the ground that the Respondents had specifically requested the Appellant to help them level their land at no cost and add value to it. The trial Magistrate rejected the Appellant's defence and decided the case in favour of the Respondents.

The Appellant was represented by M/s Kaganzi & Co. Advocates (Kampala Branch), while the Respondentw were represented by M/s Aguma Kifunga & Co. Advocates. By consent, both parties filed written submissions.

Grounds 1, 2, 3, 6 are discussed separately and Grounds 4 and 5 are discussed jointly.

Ground 1: The learned trial Magistrate erred in law and fact when he held that Defence Exhibit 1 was a worthless document and thus arrived at the wrong conclusion and occasioning a miscarriage of justice to the Appellant in determining the case in favour of the Respondents.

Counsel for the Appellant submitted that the exhibit 1 was a letter written by the 2nd Respondent Ithungu Saidah PW2, requesting that her land be levelled to add value to it, at no cost. It was the evidence of DW1 and DW2, that the Respondents indeed requested the Appellant herein to level their land at no cost. That it was on the basis of this request that the Appellant levelled and graded the suit plots of land and therefore there was consent/license and estoppel. Thus, Exhibit 1 indicates that the Appellant in grading the suit land did so under the belief that the Respondents consented to or granted them a license to do so at no cost. Therefore it cannot be said that a document relating to whether the Appellant's entry on the suit plots of land was lawful as worthless and this was erroneous and wrong.

Counsel for the Respondents on the other hand submitted that the trial Magistrate properly evaluated the evidence on record and correctly came to his conclusion. That the document was of no evidential value and could not be relied on without the Appellant proving that the said documents was served upon and received by the Respondents.

Counsel for the Respondents submitted that the Appellant claimed to have acted on the request of PW2 the 2nd Plaintiff who wrote a letter to the Appellant asking to have her land levelled at no cost and to add value to it and that is what the Appellant did. However the 1st Respondent contended that the Appellant trespassed on the suit land by excavating it, destroying various crops and dumping stones and waste and over stretching beyond the 15 metres which UNRA had compensated. That the evidence of PW1 the 1st Respondent was confirmed by PW2, PW3 and PW4. He noted that PW2 told Court that;

"I wrote this letter DE1 and I never delivered it to DW1's office I did not take it anywhere because my children objected to it... I left a copy of this letter at the Chairperson's place and I remained with one."

Counsel for the Respondents added that DW2 Ayebazibwe Francis in cross examination stated that;

"The letter written by your mother (2nd Plaintiff/Respondent) was received at our office. That document (a letter from your mother) was received in Bundibugyo office and not at Karugutu office where I sit."

Further, that the Appellant's witnesses could not show that there was a receiving stamp on the letter from neither the 2nd Plaintiff nor a signature of any of the Appellant's representatives. Thus, the Appellant failed to convince Court about the existence of the fact that the letter was

received by her within the meaning of **Section 101** of the Evidence Act and correctly reached his decision within the meaning of **Section 102** of the Evidence Act.

Section 101(1) of the Evidence Act provides that whoever desire any Court to give judgment as to the legal right or liability dependant on the existence of facts which he or she asserts must prove that those facts exist. In the present case, **Defence exhibit 1**, is a letter written by the 2nd Plaintiff (Respondent now) and who testified as PW2 in the lower Court. It is the finding and holding of this Court that Ithungu Saidah, having written the letter authorising the Appellant to level their land at no cost, and the Appellant having acted on that letter, then the Respondents or at least the 2nd Respondent is stopped from turning around to deny the existence of the letter. And this Court does not agree with the finding of the trial Magistrate that exhibit D1 was a worthless document. That was an erroneous decision which cannot be left to stand, particularly since PW2, who wrote the letter did not deny writing the same.

The submissions by Counsel for the Respondents that there was no acknowledgement stamp receiving the letter from the 2nd Respondent cannot in the circumstances hold since the author did not deny writing the same. Ground 1 of appeal is therefore allowed.

Ground 2: The learned trial Magistrate erred in law and fact when he wrongly applied the doctrine of strict liability and found the Appellant strictly and entirely liable for the Respondents' alleged loss thus occasioning a miscarriage of justice.

Counsel for the Appellant submitted that the trial Magistrate wrongly applied the law on strict liability in a claim for trespass. That the Appellant did not carry out the impugned actions with any tortious intent and neither were their actions illegal. That the Appellant acted on the actions of the Respondents and the Respondents subsequently realised that they could extort huge sums of money from the Appellant under the guise of trespass started demanding compensation. That this Court ought to take note of the provisions of Section 114 of the Evidence Act and that the acts of the Respondents amount to an abuse of Court process and a contravention of the aforementioned law.

Counsel for the Respondents in this regard submitted that the trial Magistrate correctly applied the doctrine of strict liability in view of the fact that the Appellant attempted to forward and pass over liability to UNRA through Mugara Tom was frustrated by UNRA who chose to amicably settle the specific claim against her by the Respondents. That UNRA needed extra 15 metres owing to change in the road design which they amicably compensated

and the Appellant decided to overstretch their works, the said 15 metres causing extensive damage to the Respondent's land. Therefore, it is proper that the Appellant makes good the damage caused, UNRA having amicably sorted out the specific claim against them.

Section 114 of the Evidence Act provides as follows:

"When one person has, by his or her declaration, act or omission, intentionally caused or permitted atoner person to believe a thing to be true and to act upon that belief, neither he or she his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative shall be allowed, in any suit or proceeding between himself and that person or his or her representative, to deny the truth of that thing.

Having found and held under Ground 1 that the Appellant acted on the instructions of the Respondent, particularly the 2nd Respondent, then the Magistrate wrongly applied the law of strict liability in a claim for trespass. Ground 2 of appeal is in the circumstances allowed.

Ground 3: The learned trial Magistrate erred in law and fact when he awarded UGX 15,000,000/= per plot as general damages in addition/as well as UGX 5,000,000/= to each of the Plaintiff's as compensation.

Counsel for the Appellant submitted that the trial Magistrate erroneously awarded the damages and compensation to the Respondents because these exceeded his pecuniary jurisdiction as per the provisions of Section 207 (1) (b) and (4) of the Magistrates Courts Act. That total amounts ordered by the trial magistrate amount to UGX 80,000,000/= to be paid to the Respondents.

Counsel for the Appellant went on to add that damages in tort are compensatory in nature for a loss suffered by a person following a tort, breach of contract or breach of a statutory duty as per P.G Osborn's concise Law Dictionary, page 83 and the cases of **Kibimba Rice Ltd versus Umar Salim, Supreme Court Civil Appeal No. 17 of 1992** and **Robert Coussens versus Attorney General, Supreme Court Civil Appeal No. 8 of 1999**. That it is the Appellant's contention that the trial Magistrate erred in law when he awarded the general damages and compensation because general damages are compensatory in nature, hence it was erroneous for the trial Magistrate to award a different sum as general damages and in the same vein award another sum as compensation.

Secondly, that general damages are intended to put the claimants in the same position they would have been in had the act complained of not happened, they however must also be proved. That the trial Magistrate never gave any justification as to how he arrived at the quantum of the amount he arrived at and these awards should therefore be quashed.

Counsel for the Respondents on the other hand submitted that the trial Magistrate lawfully made the orders which were within his jurisdiction on the separate plots and the law as cited by Counsel for the Appellant does not expressly prohibit separate awards on different items and in this case none exceeded UGX 20,000,000/=.

He added that there was no execution in the lower Court and this Court has the power to take over the same on its own volition and handle the same. And that the lower Court is mandated to transfer any Decree to the High Court for execution under **Order 22 Rule 8** of the Civil Procedure Rules which provides as follows;

"Where the Court to which the decree is sent for execution is the High Court, the decree shall be executed by the Court in the same manner as if it had been passed by that Court in the exercise of its original civil jurisdiction."

Counsel for the Respondents noted that in line with the above provision the issue of the awards made by the trial Magistrate can be cured by transferring the decree to be executed in the high Court.

I have considered the submissions on both sides and my view is that once the trial Magistrate made an award of UGX 80,000,000/= which exceeds his jurisdiction, it was an error. And it cannot be corrected by transfer to a High Court for execution.

Secondly, general damages are a form of compensation. The trial Magistrate therefore erred to have awarded general damages and then a different amount as compensation. That was a mix up which cannot stand. So Ground 3 of appeal is also allowed.

Ground 4: The learned trial Magistrate erred in law and fact in assessing the quantum of Ugx 15,000,000/= per plot as general damages and UGX 5,000,000/= to each of the Plaintiffs as compensation without the same being strictly proved thus occasioning a miscarriage of justice.

Ground 5: The learned trial Magistrate erred in law and fact in awarding interest of 12% on both general damages and costs thus occasioning a miscarriage of justice.

Counsel for the Appellant submitted that awards on interest are governed by **Section 26** of the Civil Procedure Act and the law governs that interest is levied on a principle sum adjudged to be paid, which in this case is general damages. That there is no provision that allows interest on costs and even then interest should not be awarded from the time of filing the suit. That even the discretion to award interest is discretional, this discretion should be exercised judiciously and the interest in the instant case was not justifiable as it was twice as the court rate of 6%.

Counsel for the Respondents submitted that reducing the interest would be wrong since the Appellant destroyed and damaged land within the Town Council, water well and high value cash crops especially cocoa which sustains the economy of Bundibugyo District.

Grounds 4 and 5 of appeal are the same touching on interest of 12%. Since both general damages and compensation have been disallowed then interest of 12% does not arise.

In fact I do agree with Counsel for the Respondent that the lower court decision is set aside and the Respondents are advised to institute a fresh suit before a Court of competent jurisdiction.

Ground 6: The learned trial Magistrate erred in law and fact when he failed to evaluate the entire evidence on record and therefore arrived at the wrong conclusion in determining the case in favour of the Respondents.

Counsel for the Appellant implored Court to exercise its duty as a first Appellate and re-evaluate the evidence before it and reiterated the earlier submissions on other grounds. This ground is hereby rejected as being too general and offends the provisions of **Order 43 Rule 1(2)** of the Civil Procedure Rules.

Ground 7: Remedies available.

Counsel for the Appellant prayed that the appeal be allowed, the decision and orders of the trial Court be quashed/set aside that the Respondents be ordered to pay costs of the appeal and in the lower Court.

Counsel for the Respondents on the other hand submitted that the only remedy available in the instant case is upholding the judgment, orders and decree of the lower Court and dismiss the appeal with costs and accordingly take over the execution pending vide **Section 218** of the Magistrates Courts Act.

Having allowed most of the grounds of appeal, I shall proceed with the alternative of holding that since the lower Court lacked jurisdiction, the judgment and orders of the lower Court are set aside.

The Respondents are hereby allowed to file a fresh suit in a proper Court having jurisdiction.

Finally, I exercise this Court's discretion under **Section 98** of the Civil Procedure Act to order that each side meets their own costs. This is because in the event of a fresh suit in a Court of competent jurisdiction, then it is not the end of the matter for now.

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WILSON MASALU MUSENE

JUDGE

4/4/2019