

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**CIVIL SUIT NO. 361 OF 2014**

1. KIYEGA CONSTANCE LWANGA
2. R4 INTERNATIONAL LIMITED :::::::::::::::::::::::::::::::::::::::PLAINTIFFS

**VERSUS**

**JAMIL NAZIR:::DEFENDANT**

**BEFORE HON. JUSTICE MUSA SSEKAANA**

**JUDGMENT**

**BACKGROUND**

The plaintiffs' filed this suit against the defendant for special damages of UGX. 114,825,765/= arising from damage and injury suffered by the plaintiff upon the collapse of the building belonging to the defendant, general damages, interest and costs of the suit.

The 1<sup>st</sup> plaintiff owned and occupied a two storied building located at Plot 939 Block 254 Kansanga at Makindye division which housed residential premises of the 1<sup>st</sup> plaintiff and office space rented by the 2<sup>nd</sup> plaintiff. That on the 11<sup>th</sup> of August, 2014, a five storied building owned and under construction by the defendant neighbouring the plaintiff's building collapsed. The rubble and debris from the collapsing building fell into the plaintiffs' neighbouring property causing serious damage and injury to the property and persons on the 1<sup>st</sup> plaintiff's residence including the 1<sup>st</sup> plaintiff's car, a Mercedes Benz Reg. No. UCQ 857 and

office equipment and property of the 2<sup>nd</sup> plaintiff. The plaintiffs have as result suffered great loss and damage for which they claim special and general damages.

The defendant filed a written statement of defence wherein they denied liability on all the allegations and stated that apart from small patches of debris in the compound, unnecessary dust and minor damages to the window glass, no damage was occasioned to the plaintiffs' neighbouring property , building and person or office equipment as alleged. That a meeting was held after inspection of the premises and it was established that apart from the dust and a broken window, no damage was occasioned to the office materials. The defendant bought window glasses and sought to replace the broken windows of the plaintiff' as agreed but her workers were forcefully sent away.

The plaintiffs were represented by *Mr. Macdusman Kabega* whereas the defendant was represented by *Mr. Isingoma Esau*.

The parties filed a joint scheduling memorandum wherein they proposed the following issues for determination by this court.

1. *Whether the plaintiff's properties were damaged as a result of the collapsing of the defendant's building.*
2. *Whether the defendant is liable for the damages/ loss claimed by the plaintiffs.*
3. *What remedies are available to the parties?*

The parties were ordered to file written submissions and accordingly filed the same.

Both parties' submissions were considered by this court.

## **DETERMINATION OF ISSUES**

### **Issue 1**

*Whether the plaintiff's properties were damaged as a result of the collapsing of the defendant's building.*

### **Submissions**

The 1<sup>st</sup> Plaintiff testified as to the damage to his properties and gave a list of items that were damaged. He adduced the report by the East Africa Consulting Surveyors and Valuers which was exhibited and marked as Ex. P4 which confirmed the damages to the property which was testified to by Pw3 Mary Bisiko Mungati the quantity surveyor who carried out the loss and damage assessment on the plaintiff's property. The plaintiffs also tendered in ExP6 loss assessment report for the motor vehicle showing the extent of the damage caused which was also written off after the accident having been in good condition prior to the accident.

Counsel therefore submitted that the plaintiffs had on a balance of probabilities proved that they suffered damages to their properties as a result of the collapse of the building and that the issue be answered by court in affirmative.

### **Defendant's submissions**

Counsel cited **Oketha Dafala Valente v Attorney General Civil Suit No. 0069 of 2004** where it was stated that the burden of proof lies with the plaintiff and the standard of proof is on the balance of probabilities. He submitted that the plaintiff

did not prove to the required standards the properties he alleges to have been damaged in his pleadings were damaged.

Counsel stated that P4's evidence was contradictory to that of the plaintiff as to the actual state of the building which is stalled in nature with two floors and that she did not know the cause of the damage in respect of the wall. The plaintiff also stated in his cross examination that he had renovated the building using Omega Constructions Ltd but he did not have any proof of payment of the said costs.

It was also submitted that the plaintiff in his testimony stated that he did not have ownership of the vehicle that is alleged to have been damaged. He also testified that he sold off the vehicle at one million after the accident and had after lodged his claim before this court having bought the car at UGX. 25,000,000. The defendant submits that the plaintiff cannot claim the alleged value of the motor vehicle or price for its repair when he had already sold the vehicle to a third party.

All the defense witnesses testified that the plaintiff was asked to allow the defendant assess and repair the damaged parts of the car but he refused.

It was therefore submitted that the defendant is not a truthful witness as he gave contradictory and false evidence and also failed to adduce evidence of the damage incurred and prayed that the issue be answered in the negative.

Counsel for the plaintiffs submitted in rejoinder that it is not in dispute that the vehicle was damaged and the damage was a direct result of the collapse of the building as a result of which the car was written off. He submitted that the 1<sup>st</sup> plaintiff was therefore entitled to rightly claim for the pre-accident value of his

motor vehicle and that the mere fact that he sold it after the accident was to try mitigating the losses he had suffered.

### **Determination**

I have considered the testimonies and evidence given before this court. It is not in dispute that the defendant's building collapsed causing some damage to the plaintiffs' properties this being the house and the vehicle. In respect of the vehicle that was assessed, Pw2 in his cross examination stated that he had not looked at the vehicle before the accident and only took pictures of the vehicle after the accident.

The defendant in his testimony also stated that the car was damaged at the side mirror and the glass and also stated that she saw the plaintiff remove some parts of the car.

In the circumstances, Issue 1 is resolved in the affirmative.

### **Issue 2**

**Whether the Defendant is liable for the damage/loss claimed by the plaintiff.**

### **Submissions**

Counsel for the plaintiff submitted that the defendant admitted to the collapsed building being hers and that it was under construction. Counsel submitted that the defendant knew or had cause to know that the continued construction of a building despite a stop order from KCCA was wrongful and exposed her neighbours to risk of damage. Counsel therefore submitted that the defendant

owed a duty of care to the plaintiffs which duty the defendant breached and is therefore liable for plaintiff's loss.

### **Defendant's submissions**

It was submitted in respect of the liability that special damages must be pleaded and must be strictly proved. Counsel for the defendant stated as the plaintiff did not prove the special damages as alleged in his plaint and the testimonies of the witnesses. The plaintiff did not have any proof of payment for the costs incurred or extent of the damages. It was also submitted that the plaintiff cannot claim the alleged value of the motor vehicle or its repair price when he has already sold the vehicle to a third party. The defendant contends that the plaintiff was asked to allow the defendant repair the damaged parts of the car but he refused and wanted the plaintiff to pay money instead.

The defendant also submits that the plaintiff did not have proof of receipts of the office property he alleged to have been damaged by the defendant.

Counsel therefore submitted that the claim for special damages should be disregarded. Since the same were never proved by the plaintiff and that he did not suffer such damages or spend such money.

In rejoinder, the plaintiff submitted that there was uncontroverted evidence which indicated that there was damage to office equipment and the fact that the plaintiff did not have office equipment is not evidence on its own to disprove the plaintiff's ownership.

### **Determination**

The defendant in her testimony stated that there was some damage to the window glass of the house and some small damage to the motor vehicle. It was testified on her behalf that she was willing to make good of the damage had the plaintiffs not refused the offer.

In the circumstance, I find that defendant is liable for the damage to the property.

### **Issue 3**

#### **What remedies are available to the parties?**

The plaintiff in his pleadings prayed for special and general damages.

In respect of the special damages, the plaintiff submitted that as a result of the damage on various properties, he engaged professional valuers to help assess the damage to his properties. It was stated that from the report by Business Automation Limited ExP2 a number of items were damaged to amount to a sum of UGX. 26,950,000/=, for the replacement value of the vehicle a sum of UGX. 34,199,000/= since the car was completely written off and a sum of UGX. 23, 590, 765/= regarding the replacement and repair value of the property costs.

In respect of the general damages, it was submitted the plaintiff was inconvenienced, his business was adversely affected and movement curtailed as a result of the damage to his vehicle causing his pain and anguish since the defendant refused to amicably compensate him. He therefore prayed for a compensation of UGX.100, 000,000 as general damages.

Counsel for the defendant submitted that the plaintiff is not entitled to any remedies as prayed. He stated that the plaintiffs did not specifically prove the special damages as required by the law. On the general damages, he stated that the defendant tried her best to ensure that the plaintiff cooperates with her to remedy the minimal damage that had been caused by the collapse of the building but the plaintiff refused to do so.

The defendant therefore submitted that the plaintiffs did not mitigate his loss if any and are not entitled to general damages as claimed.

Counsel for the plaintiff submitted in rejoinder as to the special damages that there was uncontroverted evidence through various reports which strictly proved the special damages as claimed by the plaintiff and stated that the special damages had been specifically proved in court.

In respect of the general damages, counsel submitted in rejoinder that there was evidence that the defendant was not ready to take responsibility for the damage done to her neighbours' properties and as a result of the inconvenience, anguish and pain that they suffered due to the damage, the general damages of UGX.100,000,000/= be awarded accordingly.

### **Special Damages**

*Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars and so to speak, throw*



*them at the head of the court, saying, "This is what I have lost, I ask you to give these damages" They have to prove it. See **Benedicto Musisi vs Attorney General HCCS No. 622 of 1989 [1996] 1 KALR 164 & Rosemary Nalwadda vs Uganda Aids Commission HCCS No.67 of 2011***

As submitted by counsel it is indeed trite that special damages must not only be specifically pleaded but they must also be strictly proved (see *Borham-Carter v. Hyde Park Hotel [1948] 64 TLR.*

The plaintiff led evidence to show that he incurred expenses in contracting valuers to value the loss and damage caused.

However I have perused all the records adduced by the plaintiff and evidence given on behalf of the plaintiffs and I am satisfied that the plaintiff has not proved the special damages. There are receipts to prove actual expenditure and indeed at the time of filing the plaint, the plaintiff never attached any such receipts.

The mere estimation of the damage and loss does not mean that there is proof of expenditure and money.

The plaintiffs' claim for special damages fails.

### **General damages**

As far as damages are concerned, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant's actions.

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See *Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21*

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See *Ouma vs Nairobi City Council [1976] KLR 298*.

In the circumstances of this case, it is clear that the defendant tried to replace the damaged property for the plaintiffs but this was rejected. Had the plaintiffs accepted this, they would not have gone through the expense of contracting the valuers to value the losses. In the circumstances, I find that the plaintiffs failed to mitigate the loss.

I therefore award the plaintiffs minimal general damages of UGX. 9,000,000/=

The plaintiffs are awarded **UGX 9,000,000** as general damages.

The plaintiff is awarded 60% of the costs of the suit. The nature of this suit should have been filed in a Magistrates court.

I so order.

**SSEKAANA MUSA**  
**JUDGE**  
**13<sup>th</sup> March 2020**