

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
CIVIL APPEAL NO. NO. 007 OF 2020  
(Arising from Civil Suit No. 006 of 2017)**

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1. ADVANCE UGANDA MICROFINANCE LIMITED  
2. FERRY AND MARKS SERVICES LTD } .....APPELLANTS  
VERSUS  
DOREEN SANDRA KAUMA.....RESPONDENT

10  
BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

**Judgment**

15 The appellants brought this appeal being dissatisfied with the decision of Her  
Worship Shwanda Nkore Jolly Chief Magistrate at Mpigi delivered on the 27<sup>th</sup>  
day of November 2017. The grounds of appeal according to the Memorandum of  
appeal are as follows;

- 20
1. That the learned Chief Magistrate erred in law and in fact when she  
awarded special damages not pleaded and proved.
  2. That the learned Chief Magistrate erred in law and fact in finding that the  
appellant pays to the respondent special damages of UGX 5,200,000/=
- (Uganda Shillings five Million two hundred thousand Only) which are not  
proved.

**Background:**

25 The respondent (now deceased) bought land comprised in Block 269 Plots 206 &  
209 situate at Kisimbiri in Wakiso District for a consideration of UGX  
24,000,000/= (Twenty four Million Shillings) from the 1<sup>st</sup> appellant through his

agent the 2<sup>nd</sup> appellant. The respondent though was given the Certificates of title she was unable to occupy the suit land because it was occupied and encumbered.

The respondent then instituted a civil suit for a refund of her money. At the hearing it was agreed/consented that the appellant refunds a sum of UGX 24,000,000/=. The parties however, failed to agree on the issue of special damages and general damages, interest on the damages and costs which were referred back to the trial Magistrate for determination.

**Representation:**

M/s Ssemwanga, Muwazi & Co. Advocates represented the appellant while M/s Ssebunya & Turyagenda Advocates represented the respondent. Both sides filed written submissions.

**Duty of the first appellate court:**

The duty of the Appellate Court is well laid down in many cases. In the case of **Chemeka v. Mangusho, HCT-04-CV-No. of 2016**, it was stated that;

15 *"The legal obligation of the first Appellate Court to reappraise the evidence is founded in the Common Law rather than on a first appeal, the parties are entitled to obtain from the Appellate Court its own decision on issues of fact as well as of law."*

The same was reechoed in the case of **Sanyu Lwanga Musoke v. Sam Galiwaga, SCCA No. 48/1995** where Hon. Justice A. Karokora, JSC (As he then was) held that;

20 *"It is settled law that a first Appellate Court is under the duty to subject the entire evidence on the record to an exhaustive scrutiny and to re-evaluate and make its own conclusion while bearing in mind the fact that the Court never observed the witnesses under cross examination so as to test their verosity."*


**Resolution:**

Counsel for the appellant chose to raise issues for the determination of this court and abandoned the grounds of appeal. The issues are as follows;

1. Whether the learned Trial Magistrate erred in law and in fact when she  
5 awarded special damages of UGX 5,200,000/=?
2. Whether the learned Trial Magistrate erred in law and fact in awarding  
special damages of UGX 2,000,000/= as fencing costs.

**Issue 1: Whether the learned Trial Magistrate erred in law and in fact when she awarded special damages of UGX 5,200,000/=?**

- 10 Counsel for the appellant cited the case of **Gapco (U) Ltd v. A.S. Transporters (U) Ltd, C.A.C.A No. 18/2004** on the fact that for special damages to be granted the same ought to have been specifically pleaded and proved through documentary evidence or through the person that received or testimonies of experts. That this  
15 is different from the requirements on the award of general damages, which is that where there was a breach of contract court may award general damages through opinion and judgment of a reasonable tribunal. (See: **Hajji Asumani Mutakanga v. Equator Growers (U) Ltd, SCCA No. 7 of 1995**).

Counsel submitted that the facts at hand indicate that the respondent pleaded  
20 UGX 24,000,000/= consideration for the suit land, UGX 500,000 as stamp duty, UGX 1,500,000/= as surveyors fees, and UGX 2,000,000/= as fencing a total sum of UGX 4,000,000/= as special damages. That the trial Magistrate in the instant case awarded UGX 5,200,000/= as special damages, way above the UGX 4,000,000/= which the respondent had pleaded. Thus, the trial Magistrate erred in law and fact in awarding special damages to a tune of UGX 52,000,000/= as  
25 opposed to UGX 4,000,000/= which was pleaded. 

Counsel for the respondent on the other hand submitted that the respondent specially pleaded the special damages and these were proved by oral evidence as per the case of **Mohanlal Kakubhai Radia v. Warid Telecom Uganda Limited, Civil Suit No. 224 of 2011**. That the respondent also pleaded more special  
5 damages during her examination in chief as UGX 800,000/= paid to her lawyers. That the respondent pleaded a total sum of UGX 8,300,000/= as special damages, including the surveyor's fees and report, fencing materials and stamp duty. Counsel added that in the circumstances the award of UGX 5,200,000/= was reasonable.

10 I have carefully read the submissions of both parties and agree with the position on the law that special damages must be specifically pleaded and proved. In the instant case the respondent allegedly pleaded special damages to a tune of UGX 8,300,000/= and the trial Magistrate awarded UGX 5,200,000/= out of what was pleaded. The special damages were broken down as follows as per the  
15 respondent's counsel;

- Legal Facilitation 800,000/=
- Surveyors fees 3,000,000/=
- Fencing fees and labour 4,000,000/=
- Stamp duty 500,000/=

20 It was the trial Magistrate's finding that the respondent pleaded and proved the special damages but only to a tune of UGX 5,200,000/= which was awarded.

I have perused the court record and find that the respondent only pleaded the following special damages according to her plaint;

- Consideration of UGX 24,000,000/=
- 25 • Stamp duty of UGX 500,000/=



- Surveyors fees of UGX 1,500,000/=
- Fencing fees of UGX 2,000,000/=

It was the evidence of respondent and Benson Tumwesigye that the respondent engaged a surveyor and also fenced off the land, but no documentary evidence  
5 was adduced to that effect.

It is my understanding of the law that for an award of special damages to be made the party should specifically plead and prove the same. The respondent in the instant case only pleaded special damages to a tune of UGX 4,000,000/= according to her plaint. Save for the consideration of UGX 24,000,000/= paid  
10 for the land, I do not see anywhere any proof of the other special damages in the present matter, much as the appellant was arguing that the respondent ought to have been awarded a sum of UGX 4,000,000/= as opposed to UGX 5,200,000/=.

The respondent in my view did not adduce any documentary or oral evidence to  
15 support her claim of special damages; I do not see any receipts upon which to verify her claim. Nor any oral evidence to support the claim of her special damages save for merely mentioning the expenditures. And this court will not operate on speculation.

I accordingly find and hold that the trial Magistrate awarded special damages to  
20 a tune of UGX 5,200,000/= in error since they were supported or proved by an evidence either documentary or oral. The same are hereby set aside.

This issue is resolved in the affirmative.

**Issue 2: Whether the learned Trial Magistrate erred in law and fact in awarding special damages of UGX 2,000,000/= as fencing costs?**

25 Counsel submitted that while the respondent pleaded UGX 2,000,000/= as fencing fees the same were never proved by the respondent and the trial

Magistrate awarded the same in error since there was no proof either orally or through documentation. Thus, the award should be rescinded.

Having found and held in the above issue that the special damages as awarded by the trial Magistrate were done so in error this issue is equally resolved in the  
5 affirmative.

I hereby allow this appeal. Each party bears their own costs. I so order.



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**OYUKO ANTHONY OJOK**

10 **JUDGE**

**6/12/2021**