

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL APPEAL NO. 12 OF 2020**

(ARISING FROM CIVIL SUIT NO. 58 OF 2019)

KYAZZE EVA APPELLANT

VERSUS

HERBERT BWENGYE RESPONDENT

BEFORE: HON: JUSTICE EMMANUEL BAGUMA

JUDGMENT

Introduction.

This is an appeal against the judgment and orders of His Worship Okumu Jude Muwone Magistrate Grade 1 at Makindye Chief Magistrate's court.

The respondent/plaintiff filed **Civil Suit No. 58 of 2019** against the appellant/defendant for wrongful eviction, compensation for the spoilt property, general damages and costs of the suit.

The trial magistrate found in favor of the respondent/plaintiff and the appellant/defendant being dissatisfied with the judgment and orders of the trial court, appealed to this honorable court.

Grounds of appeal.

Initially, the memorandum of appeal had 5 grounds but during the hearing of the appeal, counsel for the appellant decided to abandon grounds 1 and 4 and proceed with only grounds 2, 3 and 5. Both counsel agreed to file written submissions in respect of the remaining 3 grounds, which were argued as below;

- 1. The learned trial magistrate erred in law and fact when he held that the appellant illegally evicted the respondent from her premises.**

- 30 2. The learned trial magistrate erred in law and fact when he held
 that the respondent did not receive his properties.
3. The learned trial magistrate erred in law and fact when he
 granted unjustified damages in form of general damages and
 monies lost during eviction of the respondent from the
35 premises.

Representation.

The appellant was represented by Mr. Denis Mwina together with Mr.
Isaac Ssekabira while the respondent was represented by Ms. Kyakuwa
40 Lydia.

Duty of the 1st appellate court

The duty of this court as a first Appellate Court was stated in the case of
Kifamunte Henry V Uganda, S.C criminal Appeal No. 10 of 1997 where
court held that;

45 *“The first appellate court has a duty to review the evidence of the case,
to reconsider the materials before the trial judge and make up its own
mind not disregarding the judgment appealed from but carefully
weighing and considering it.”*

This Court therefore has a duty to re-evaluate the evidence to avoid a
50 miscarriage of Justice as it mindfully arrives at its own conclusion.

I will therefore bear these principles in mind as I resolve the grounds of
appeal in this case.

**Ground 1: The learned trial magistrate erred in law and fact when he
held that the appellant illegally evicted the respondent from her
55 premises.**

Submissions by counsel for the appellant on ground 1.

Counsel for the appellant submitted that the respondent had defaulted in
rent for a period of almost 3 months, which constituted a fundamental

breach of the tenancy agreement. Counsel stated that the default in rent
60 also determined the tenancy relationship between the appellant and
respondent and made the respondent a trespasser on the suit premises
giving the appellant the right to use reasonable force to evict him.

Counsel argued that there was no evidence adduced at trial by the
65 respondent to prove that he did not owe the appellant any money in form
of rent.

Counsel added that PW2, a wife to the respondent testified during trial
that they paid rent for five months from January to May 2017 yet they
stayed in the premises till August 2017 when the respondent was
70 arrested leaving the rent for June, July and August 2017 due at the time
of the arrest and during his stay in prison.

Counsel further submitted that the trial magistrate found that the
appellant did not involve the LC1 of the area, however, the appellant
75 testified that she reported the matter to the LC1 and even at the time of
removal of the respondent's properties, the LC1 was called and even the
list of properties was recorded and comprises the stamp of the L.C1 of
the area. He referred to exhibit DEX1.

80 **Reply by counsel for the respondent.**

Counsel for the respondent submitted that the trial magistrate was
correct to find that the appellant illegally evicted the respondent.

Counsel stated that the trial magistrate rightly applied the rent
85 Restriction Act, Cap 231 and the case of **Komakech Sam & Others V
Ayaa Corina & Anor H.C.Civil Appeal No. 0028 of 2016.**

Counsel argued that under the **Rent restriction Act**, a landlord could only repossess any dwelling house/premises or eject a tenant upon
90 acquiring an order from court. That in the instant case, no such order was acquired by the appellant before the eviction and as such rendering the same illegal for non-compliance with the law as correctly held by the trial magistrate.

Counsel added that there is no evidence on record to prove that the
95 appellant gave notice to the tenant to repossess the premises or to require him to pay the rent arrears, which notice the tenant, continued to defy.

Counsel submitted that if the respondent had defaulted on rent, the
100 proper procedure would have been to enforce payment through a court order or an eviction order.

Analysis of court on ground 1.

Section 6 (1) of the Rent Restriction Act requires a landlord to acquire
105 an order from court before repossessing any dwelling house/premises or ejecting a tenant.

In the case of *Joy Tumushabe & Anor v Anglo Africa Limited & Anor*
SCCA No.7 of 1999, it was held that;

110 ***"Where tenants defy the landlord's terms and conditions of tenancy agreed between the parties, and the landlord gives notice to repossess or effect a lawful act which the tenants continue to disregard, they become trespassers on the property concerned."***

115 Further, in the case of *Kyomukama Salome v Katushabe Juliet* H.C.Civil Appeal No.61 of 2018, court held that; "...If the Appellant felt that the Respondent had defaulted on rent, in the absence of a written agreement

120 spelling out the terms, the implied conditions by the law would apply or she would have sought to enforce payment through a court order or an eviction order..."

125 In the instant case, the respondent was arrested on **10th August 2017** as seen in the plaint. The appellant testified as **DW1 at page 10 of the lower court proceedings** that on **4th September 2017**, she evicted the respondent while he was in prison and the house was not in use. She stated that she kept his properties in a new poultry house under construction.

130 It is clear that the respondent was in prison at the time of eviction as adduced by both parties during trial and it is clear that no notice of eviction was served on him. The appellant also testified in cross-examination at **page 10 last paragraph line 1** of the lower court proceedings that she did not give any notice to the respondent.

135 It is my considered view that the appellant evicted the respondent without an eviction order from court as necessitated by the above provisions of the law. There is no evidence on court record to prove that the appellant gave notice to the respondent to repossess the premises or to require him to pay the rent arrears, which notice the tenant, continued to defy.

140 Counsel for the appellant labored so hard to convince court that the appellant used reasonable force to evict the respondent which is not provided under the law because the law requires notice of eviction to be served on the tenant. Even if counsel wanted court to believe that the LC1
145 was called, there is no evidence to show that the LC1 was present.

I therefore find that the trial magistrate was right to hold that the eviction of the Respondent/plaintiff by the Appellant/defendant was illegal and I see no reason to fault him. Ground 1 of the appeal fails.

150

Ground 2: The learned trial magistrate erred in law and fact when he held that the respondent did not receive his properties.

Submissions by counsel for the appellant on Ground 2.

155 Counsel for the appellant submitted that at **page 29 Paragraph 3** of the Record of Appeal, the Respondent testified during cross examination that not all his properties were destroyed when the police made the list, and he could not move with the property because it was at night.

160 Counsel argued that this was clear evidence that the Respondent actually received his properties but just decided to reject them.

Counsel stated that at **Page 35 Paragraph 1 of the Record of Appeal**, the Appellant testified during her examination in chief that upon the release of the Respondent, his properties were handed over to him but he did not

165 take them.

Further that **DW2** also testified at **Page 36 Paragraph 2 of the Record of Appeal** that the respondent's properties were given to him but he left them.

170 **Reply by counsel for the respondent.**

Counsel for the respondent submitted that the learned trial magistrate properly evaluated the evidence on record and came to the right conclusion that the respondent/plaintiff did not receive any of his property from the appellant/defendant because some of it was stolen

175 and others destroyed due to poor storage.

Counsel argued that the Respondent on **page 3 of the record of proceedings paragraph 3, line 11** testified that he did not take the property because it was destroyed.

180 Counsel stated that **DW1 at page 10 of the record of proceedings** testified that she asked a one Opio a police officer why the plaintiff had not taken his property. That this confirmed that the property was never received.

185 Counsel added that **DW2 a daughter to the Appellant at page 11 of the record of proceedings paragraph 1 line 6 and 7** testified that the respondent was given his property and left them at the Appellant's home and further on cross examination on **page 11 of the record of proceedings paragraph 2 line 2** she testified that the Plaintiff left his property at the Appellant's home.

190

Analysis of court on ground 2.

In the instant case, the Respondent testified as **PW1 on page 3 paragraph 3, line 10** of the record of proceedings that he did not receive his property because it was all destroyed.

195 **DW1, the appellant testified at page 10 paragraph 1 line 14-16** that they made a list of the property and handed them over to the respondent/plaintiff.

200 **DW2, a daughter to the appellant testified at page 11, paragraph 1 line 7** of the record of proceedings that they gave the respondent his property but he left them home.

DW4, the chairperson for the youths testified at page 13 last paragraph that it was him and the defence secretary who were getting things from the appellant's house and the police was recording and they handed them

205 over to the respondent but he refused to get his things claiming that they were spoilt.

From the above evidence of DW4, the respondent was handed over the properties in the presence of the Chairperson Youth and defence
210 secretary. 'PEXI' also confirms the list of properties and it was signed by both the appellant and respondent and other witnesses.

In my considered view and opinion, the properties were handed over to the respondent even if he refused to take them alleging that they were
215 spoilt.

I find that the trial magistrate erred in holding that the properties were not handed to the respondent. Ground 2 of the appeal succeeds.

**Ground 3: The learned trial magistrate erred in law and fact when he
220 granted unjustified damages in form of general damages and monies lost during eviction of the respondent from the premises.**

Submissions by counsel for the appellant on ground 3.

Counsel for the appellant cited the case of **Ahmed El Termewy V Hassan
225 Awadi HCCS No. 95 of 2012** and submitted that general damages are compensatory in nature and are meant to make good any non-monetary loss, inconvenience or injury suffered by a claimant as a result of the acts of the other party to a suit and are discretionary.

230 Counsel argued that there was no evidence led by the respondent of any loss suffered as a result of the appellant's acts that would justify the grant of general damages to the tune of 4,000,000/=. That the respondent only led evidence of loss of a basin, water flask, plastic chairs and one mattress which were damaged and these could not justify the
235 award of 4,000,000/= as general damages.

Counsel further stated that the trial magistrate awarded the respondent UGX 3,000,000/= as money that was kept in the house and got lost yet no evidence was led to prove that the respondent actually had the said monies in the house.

240

Reply by counsel for the respondent.

Counsel for the respondent submitted that the respondent testified at trial that he had UGX 3,000,000/= in the house and this evidence was corroborated by PW2 who testified during cross examination at page 5 that the money was inside the mattress and it was for their matooke business.

245

Counsel stated that the trial magistrate rightly exercised his discretion and reduced the amount of 9,000,000/= claimed by the respondent to 4,000,000/= which was in his discretion.

250

Analysis of court on Ground 3.

Section 101(1) of the Evidence Act Cap 6 provides that whoever desires any court to give judgment as to any legal right dependent on the existence of facts which he or she asserts must prove that those facts exist.

255

In the case of **Shell Uganda Limited V. Achilles Mukiibi, C. A. Civil Appeal No. 69 of 2004**, court held that;

"A plaintiff must understand that if they bring an action for damages, it is for them to prove their damages. It is not enough to write down the 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, and they have to prove it."

260

265 In the instant case, at **page 6 of the judgment**, the trial magistrate awarded the Respondent UGX 3,000,000/= (Three Million Shillings) being the money that the respondent had kept in the house that got lost during the eviction.

There is however no evidence on court record showing proof of the
270 3,000,000/= (**Three million shillings**) apart from mere allegations by **PW2** a wife to the respondent/plaintiff who alleged that her husband had money in the mattress and I wonder how she left out that money up to the time of eviction yet she knew that her husband was in prison.

275 Although pleaded, the evidence adduced by the respondent at trial did not meet the requirement of strict proof. The claim for 3,000,000/= is consequently rejected.

On the issue of general damages, the award of general damages is in the
280 discretion of court in respect of what the law presumes to be the natural and probable consequence of the defendant's act or omission.

In the instant case, the respondent had pleaded general damages of
9,000,000/= (**Nine million shillings**) and the trial magistrate in his discretion awarded him general damages for inconvenience of
285 4,000,000/= (**four million shillings**) which I find no reason to tamper with in the circumstances.

Conclusion.

In the final analysis, this appeal partly fails and partly succeeds.

290

In the premises, court makes the following orders;

1. That there was illegal eviction of the respondent.
2. That the properties were handed over to the respondent.

- 295 3. The award of 3,000,000/= (**Three million shillings**) as monies lost during illegal eviction is rejected and set aside.
4. The award of general damages for inconvenience of 4,000,000/= (**four million shillings**) is upheld.
5. Given the circumstances of this appeal, each party should bear its own costs both on appeal and at the lower court.

300 **I so order**

Dated, signed and delivered by email this 9th day of July 2021.



305 **Emmanuel Baguma**
Judge