THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

CIVIL SUIT NO. 17 OF 2021

OKELLO MICHAEL.....PLAINTIFF

VERSUS

ANYWAR QUINTO.....DEFENDANT

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

JUDGMENT

Background facts

On 24th March, 2021, the Plaintiff on request by his friend, the Defendant, gave the Defendant the Plaintiff's motor vehicle registration No. SSD 662 AN, a Black Suzuki Escudo, to drive for three hours, on a personal errand as the Defendant wished to supervise his business at Akilok, within Kitgum District. The Defendant drove the vehicle but was involved in an accident. The vehicle was only found by the Plaintiff the following day, dumped by the road side, between Orom Centre and Namukora, Kitgum District, in a wrecked state. The Plaintiff reported the accident to Kitgum Police Station and the vehicle was towed to Orom Police Post from where it was inspected and kept to-date.

The Plaintiff sued, contending the Defendant was negligent in causing the accident and totally destroying the vehicle. He sought for replacement value of the vehicle assessed by his Valuers at Ugx.48, 500,000 which he claims as special damages. He also claims for other expenses under the head of special damages, as well as general damages, interests and costs of the suit.

The Defendant initially denied liability, contending that although he drove the motor vehicle in question, he was not negligent. He averred that he had no control over the accident and that the vehicle was in a poor mechanical condition before he drove it.

After the scheduling conference in which the Defendant had maintained his denial, the Defendant accepted liability during the appearance of 15th September, 2022, before Alex Ajiji Mackay, J., but disputed the quantum of damages, especially the replacement value of the Plaintiff's motor vehicle. The parties prayed to be allowed to adduce evidence of expert Valuers, regarding the replacement value of the vehicle.

At the time the liability was admitted, the parties had already lodged witness statements. The Plaintiff had filed his on 28th June, 2022 while the Defendant did file on 14th July, 2022. They had also already filed Joint Scheduling Memorandum on 28th

June, 2022. Thus, the witness statements and the Joint Scheduling Memorandum did not encompass the fact of admission of liability. This of course is inconsequential, as I will demonstrate shortly.

Legal Representation

When the case came up for hearing before me on 27th January, 2023, Mr. Tugume K.B appeared for the Plaintiff, while Mr. Openy Samuel appeared for the Defendant. Both parties were in Court. Learned Counsel for the Defendant confirmed to Court that the Defendant's liability in negligence was not contested but the remedies, especially the quantum representing the replacement value of the Plaintiff's vehicle. This position was confirmed by learned counsel for the Plaintiff. The parties however proceeded to adduce evidence, to prove their respective contentions. Each side testified and called an additional witness to speak about their competing Valuation Reports. Documents were exhibited by consent of the parties.

Issue

In light of these developments, and given the admission of liability, one issue remains for resolution, as framed by the parties, that is, the remedies available.

I have had the benefit of reading the written submissions filed by both learned counsel, for which I am grateful. I will not

reproduce them, but will only advert to, where necessary, for brevity.

Resolution

As observed, given that liability was admitted, that is, the fact that the Plaintiff's motor vehicle registration number SSD 662 AN, a Black Suzuki Escudo got involved in an accident on 24th March, 2021 while being negligently driven by the Defendant, this court has no judicial duty to determine the question of negligence. I however note that despite the concession, a bit of the Defendant's submission still purports to create the impression that liability is in issue, that is, that the Defendant negligently drove the Plaintiff's motor vehicle. I however consider that aspect of the submission misplaced, as it is at variance with the rest of the arguments, and the parties' earlier agreed positions presented to Court. I also note that the Plaintiff pleaded the doctrine of *res ipsa loquitur*, a term in the common law of torts, expressed in the Latin. It infers negligence from the very nature of the accident, in the absence of direct evidence on how the Defendant behaved. It simply means, "The things speak for itself."

In the circumstances, the aspects of the Plaintiff's witness statement alluding to the fact of negligence, and the relevant parts of the Defendant's witness statement denying the allegation, no longer appeal for relevance, in my determination.

The tort requires no further proof in light of the admission. And as observed, the parties' competing evidence on this matter was crafted well before the admission of liability and thus the aspects dealing with the fact of the accident would be of no legal consequence, in as far as the aspect of liability in negligence is concerned. The may however only be relevant on the issue of the reliefs available.

At law, admission is governed by section 57 of the Evidence Act. The section provides to the effect that facts admitted need not be proved. The section (earlier numbered as section 56) was interpreted and applied by the Supreme Court of Uganda in **Kampala District Land Board & another Vs. National Housing and Construction Corporation, Civil Appeal No. 2 of 2004.** See: Also **Kinyera George Candano Vs. Victoria Seeds Ltd, Civil Suit No. 604 of 2015 (Per B. Kainamura, J.); Manson (Uganda) Ltd Vs. Century Bottling Co. Ltd & 2 others, Civil Suit No.597 of 2001 (per Yorokamu Bamwine, J (as he then was.)**

The admission notwithstanding, I do however recognize that negligence as a tort, is actionable at the suit of a person suffering damage in consequence of the defendant's breach of duty to take care to refrain from injuring him. Thus in the celebrated dictum of Alderson B., in **Blyth Vs. Birmingham Water Works Co. (1856) 11 Ex. 781, at p.784**, negligence was

defined as the omission to do something which a reasonable man (and I think a woman), guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man (and woman) would not do. Thus, in my view, negligence, simply means neglect of some care which we as humans are bound to exercise towards others. In this Judgment it is no longer useful to expound the ingredients of the tort of negligence. The clarity offered, therefore, suffices, as I proceed to resolve the issue of remedies. In so doing, I will address the issue under the specific heads of reliefs, as claimed by the Plaintiff, and as argued by the parties.

Special damages

The plaintiff pleaded the particulars of special damages. He initially sought to recover Ugx 76,240,000 as the replacement value of the destroyed vehicle. Understandably, this is a pre-trial loss, which has to be claimed as special damages. The Plaintiff however, later reduced his claim to Ugx 48,500,000, basing on what his Valuer (PW2) subsequently assessed. This court was informed, this followed the guidance of the Deputy Registrar of Court, that the parties obtain independent Valuers.

Regarding the evidence by the parties, the Plaintiff's witness statement was received as his evidence in chief. He was cross examined. He alluded to the Motor Vehicle Inspection and Loss

Assessment Report prepared by Ntende and Associates, dated 4th March, 2022, which was admitted as PEX12. The Plaintiff also explained the basis of his earlier claim for a higher figure. He stated that the value of Ugx 76,240,000 was informed by an earlier consultation he had made to B.C Network General Investment Co. Ltd, a car bond in South Sudan. In his testimony, and submission, the Plaintiff, therefore, finally prays for Ugx 48,500,000, as given by his expert witness, as replacement value for the Plaintiff's vehicle.

The Plaintiff also testified that he spent some amounts on hire of alternative vehicle while in Uganda, and in South Sudan. In respect of Uganda, he claimed he hired alternative transport for 36 days, from 26th March, 2021 to 30th April, 2021, at a cost of Ugx 120,000 per day, thus he sought to recover Ugx 4,320,000 as additional special damages. He also claimed to have hired alternative vehicle while in Juba, South Sudan, for 38 days from 1st May, 2021, to 7th June, 2021, at a cost of US$ 40 per day. He thus further claimed for US$ 1520 as special damages. He stated that he is employed in Juba.

PW2, Ntende Moses Joseph gave oral evidence basically supporting the Valuation Report (PEX12). Giving his credentials, PW2 stated he holds a Bachelor of Science Degree in Mechanical Engineering from Makerere University, having obtained it in the year 1990. He said he has been a member of

the Association of Engineering Valuers and Loss Association since the year 2009, and his membership number is 29. He is also a member of the Uganda Institute of Professional Engineers, since the year 2010, and his membership number is PE/758. PW2 bragged of over 20 years' experience in Valuation work. He asserted that he previously worked under Bageine & Co., a Valuation Company, before he established his own, Ntende & Associates, in the year 2008.

Regarding how the Plaintiff was sourced, PW2 stated that the Plaintiff was sourced as a client by CMT Realtors Ltd, a company with a close working relationship with Ntende & Associates. PW2 clarified that CMT Relators Ltd is more specialized in Valuation of lands and buildings, so, it handed the Plaintiff's instructions to Ntende & Associates which has a specialty in Valuation of machineries, vehicles, plant and equipment.

Regarding the basis of his valuation, PW2 stated that he used the pre-accident value of the vehicle which ranged between Ugx 50,000,000 to Ugx 60,000,000. He however used the lower value of Ugx 50,000,000 from which he deducted the salvage value of the car of Ugx 1,500,000. PW2 explained that the current salvage value of the vehicle is the value of the wreck if the vehicle were to be sold (I suppose as scrap by the plaintiff). PW2, therefore, came up with a replacement value of Ugx

48,500,000. The witness owned his Valuation Report, saying he signed it. He also spoke about how he inspected the accident motor vehicle at Orom Police Station, Kitgum District, on 24th February, 2022. He classified the vehicle as having been damaged beyond repair.

PW2's Report was based on the assumption that the motor vehicle was in a tip-top working condition at the time immediately before the accident, reasonable wear and tear notwithstanding. PW2 recommended that repairs of the Plaintiff's motor vehicle would not be economically viable, thus a newly reconditioned vehicle under similar condition as the Plaintiff's, before the accident, could be purchased, to replace the wreck.

In his defense, the Defendant, too, lodged witness statement, and was cross examined. He called an expert in support of his counter-proposed vehicle replacement value. The Defendant who testified as DW1 offered Ugx 14,000,000 as compensation for the Plaintiff's vehicle. He stated that, within that amount, Ugx 10,000,000 would cover the actual car value, while Ugx 8,000,000 would cover Uganda Revenue Authority fees. With respect, there is a glaring problem with the mathematics here.

Regarding the rest of the claims for special damages, the Defendant did not say anything, in his evidence.

The Defendant's called an expert witness, Nyeko Hashim, DW2, who gave evidence *viva voce*. DW2 stated that he is a valuation surveyor who has done close to 10 years in valuation work. He later clarified that it is actually 8 years. DW2 testified that he obtained a Bachelor of Science degree in Land Economics from Kyambogo University in the year 2018 when he graduated. He also stated he was still finalizing a financial modelling and analysis course with a Financial Institute based in London, an online program. DW2 however maintained that he is a Financial Analyst. He also stated that he is a member of the Institute of Surveyors of Uganda, since the year 2018. DW2 could not however recall his membership number. DW2 could not as well tell Court the name of the President of the Institute of Surveyors of Uganda.

In cross examination, DW2 conceded that he is not a registered Valuer yet. He further accepted that he does not have a registration number. That notwithstanding, the Defendant relied on the Valuation Report dated 21st March, 2022, prepared by BIDWELLS, a company for which DW2 works. The Report was admitted as DEX1. DW2 conceded that the Report (DEXI) was prepared, not by himself, but by a one Mweheyo Karumu Cornelius, on behalf of BIDWELLS and Mr. Mweheyo signed it. Mr. Mweheyo was however not called to testify on the Report. Be that as it may, the Defendant's expert witness returned the

value of Ugx 18,000,000 as a possible compensation for the Plaintiff's vehicle.

The law on special damages is well settled. Special damages must be pleaded and strictly proved although they need not be supported by documentary evidence in all cases, as cogent verbal evidence can also do.

See: **Kyambadde Vs. Mpigi District Administration [1983] HCB 44**; **Kampala City Council Vs. Nakaye (1972) E.A 446; Gapco (U) Ltd Vs. A.S Transporters Ltd, Civil Appeal No. 07 of 2007 (SCU) (Per G.M Okello, JSC)**; **Uganda Telecom Ltd Vs. Tanzanite Corporation [2005] 2 E.A 331, at page 341; John Eletu Vs. Uganda Airlines Corporation [1984] HCB 44.**

In my view, the legal position that cogent verbal evidence can prove special damages should be rather the exception than the rule. I am aware that the liberal approach have been taken by courts to allow special damages to be considered as proved, but the existence of the claim for special damages must be clear from the pleadings. A caution should however be heeded, for as observed by Saied, Ag. CJ (as he then was) in **Semakula Vs. John Kaddu [1976] HCB 13**, such lenience should not call for laxity in pleading and proving special damages.

In this matter, however, the burden was on the Plaintiff to prove his claims. It is he who wishes this Court to believe in his contentions. This is the import of section 101, 102 and 103 of the Evidence Act. Thus, when a party adduces evidence sufficient to raise a presumption that what he/she asserts is true, he/she is said to shift the burden of proof, that is, his/her allegation is presumed to be true, unless his/her opponent adduces evidence to rebut the presumption. See: **Manson (Uganda) Ltd Vs. Century Bottling Co. Ltd & 2 others, Civil Suit No.597 of 2001 (Yorokamu Bamwine, J, (as he then was)**

In **Sebuliba Vs. Co-operative Bank Ltd [1982] HCB 129**, Kato, Ag. J (as he then was) held that the burden of proof in civil matters lies upon the person who asserts or alleges, and a party can be called upon to disprove or rebut what has been proved by the other side.

In the present matter, beginning with the claim for compensation for the Plaintiff's motor vehicle, I find the evidence adduced for the Plaintiff more convincing. The value of Ugx 48,500,000, according to PW2, was based on his survey of the market prices of similar vehicles in the Ugandan car bonds. PW2 adjusted the salvage value of Ugx 1,500,000 from the minimum market value of Ugx 50,000,0000, thus arriving at the compensation value of Ugx 48,500,000. This is unlike the

Defendant whose witness, DW2, admitted in cross examination that the basis for his proposed value of Ugx 18,000,000 is sourced from B-Forward, (a company based in Japan, with offices across the world, including Uganda) dealing in the sale of used motor vehicles. DW2 stated that the value of a similar vehicle as the Plaintiff's, from B-Forward, is US$ 4,700. DW2 did not however state how that amount translates to Ugx 18,000,000. DW2 also admitted that he did not consider the taxes that would be paid if such a vehicle were imported to Uganda, or South Sudan, to replace the Plaintiff's vehicle. DW2 merely asserted that taxes would not exceed US$ 1000. I find the claim regarding the would-be taxes, without basis. DW2 and the Defendant appear oblivious that the Plaintiff's motor vehicle was duly registered, *albeit* in the Republic of South Sudan, meaning he paid full taxes for its clearance and use in that jurisdiction.

In my view, the general approach in assessing the proper compensation in a matter such as the present, is that, the person who has lost his property due to the negligent act of another, ought to be put in the same position as he/she would have been in if his/her property had not been lost due to the other's negligence. The compensation should, therefore, represent the actual loss suffered. The general approach was espoused in **British Transport Commission Vs. Gourley (1956) A.C 185, at 197**, a personal injury case, but whose

principle, with respect, should apply generally to cases of actual loss due to negligence. That decision was persuasively followed by the Supreme Court of Uganda in **Robert Coussens Vs. Attorney General, Civil Appeal No. 8 of 1999** (per Oder, JSC)(RIP).

The present Plaintiff thus ought to be put in a fairly equal position as that before the accident. He cannot be offered a replacement value for the vehicle which leaves the tax consequences on his shoulders. What therefore is the proper compensation amount for the Plaintiff's vehicle?

In his testimony, the Plaintiff confirmed that he paid taxes for his vehicle to the tax authorities in the Republic of South Sudan. I find that evidence supported by the Vehicle License (PEX1), and the Vehicle Safety Certificate (PEX2), which show that, the Plaintiff's vehicle was duly registered in that Country. I should add that, there is no way the Ugandan Customs Authority would have allowed the Plaintiff's motor vehicle into Uganda, as a temporary import (meaning the vehicle would be returned to South Sudan at the lapse of the permitted period of stay in Uganda), if the vehicle was not duly licensed in the Republic of South Sudan, as the vehicle would have no use in Uganda and wouldn't qualify as a temporary import, under the East African Community Customs Management Act, 2004.

In his submission, learned Counsel for the Defendant argued that the Plaintiff failed to prove how much he purchased the vehicle. He also submitted that the Plaintiff could not show how the vehicle was imported in South Sudan. Counsel argued that the Plaintiff left this Court guessing what the true cost of the vehicle is. With respect, Counsel's submissions lack merit. The Plaintiff gave oral evidence that the purchased the vehicle from Japan at US$ 10,000, and this covered transportation costs to Mombasa, Kenya. I think this was the CIF Mombasa (Cost Insurance Freight Value). The Plaintiff also stated that all the documents were handed to the South Sudan Revenue Authority, at registration of the vehicle. This Court accepts this evidence. It is a practice, supported by law, at least across the East African Community States, which this Court takes judicial notice of.

The Plaintiff also stated that he used agents to do the online payment/ telegraphic transfer for the vehicle. Again, this is a common trade practice in the purchase of motor vehicles from Japan, which this Court can safely take judicial notice of. I therefore, accept that evidence.

More importantly, the US$ 10,000 the Plaintiff says he paid to import the vehicle, does not cover the taxes he paid to clear it. Thus, the submission for the Defendant, with respect, appears to suggest that, the Plaintiff ought to be compensated only for

the amount he paid to import the vehicle, without considering the taxes paid thereon. I think, with respect, there is a flaw in that argument, for the reasons already canvassed in this Judgment. The plaintiff ought to be put back to the position he was in before he lost his vehicle in the accident caused by the Defendant.

In this case, PW2 gave a fair replacement value of the Plaintiff's vehicle. He was not challenged in cross examination. The Defense expert witness did not cast doubt in the Valuation done by the Plaintiff's witness (PW2). Unlike PW2 who demonstrated his expertise in valuation of motor vehicles, DW2 conceded, he is neither a registered Valuer nor a qualified Surveyor. He also conceded that unlike Mr. Mweheyo who signed the Valuation Report (DEX1), DW2 has never graduated, to gain membership to the Association of Valuers of Uganda, and has not gained the years of practice. I also note that when he claimed he has done Valuation work for eight years, DW2 lied on oath. I must observe that if truly DW2 was doing that kind of specialized work he claims, it clearly shows that he has been holding out. DW2 projected himself as an expert in his field yet his own report and concession betrayed him. With respect, DW2's alleged qualifications were not clearly connected to what he purports to be. It is thus a little puzzling to Court how a qualified Valuer and Surveyor at that, could not remember his membership number. At least, having known he would be appearing in court

as an expert witness, DW2 ought to have armed himself with the requisite information about his qualifications and membership to professional bodies. To stretch a little further, DW2's deficiency was latent as he could not tell Court the name of the President of the Professional Body to which he purports to belong. When DW2 could not hide the want of his credentials any longer, he rightly conceded that he is not a qualified Valuer. This was in cross examination. It is thus clearer that DW2 is not a qualified Valuer given that he did not sign DEX1 as it was signed by Mr. Mweheyo. Unfortunately, Mr. Mweheyo, as noted, was not called as an expert witness for the Defense. No explanation was given for his absence. It was not explained why Mr. Mweheyo allowed DW2 to appear in Court in his stead. In my view, DW2 appears to have been the person behind the report preparation yet he is not qualified in the art and science of Valuation. Whereas DW2 is described in DEX1 as a field Valuer, he is said to have done his work under the guidance of a one Ahimbisibwe Pedson (a Mechanical Engineer). DEX1 also shows that DW2 was supervised in his assignment by Mr. Mweheyo, a Registered Surveyor of Uganda. However, how DW2 was guided and supervised by the named persons, this Court was not told. Mr. Ahimbisibwe Pedson, too, was not called to testify.

Unlike the Defense witness, PW2 demonstrated the basis for his expert opinion. His qualification and experience was not in

doubt. He is a qualified Valuer of considerable experience. The basis of his valuation was rooted in an acceptable formulae. PW2 had before him photographs of the pre- accident vehicle (PEX7) whose value he assessed at Ugx 50,000,000. He obtained the value from Ugandan car bonds on or about 24th February, 2022. PW2 valued the car wreckage at Ugx 1,500,000 (salvage value), hence the proposed replacement value of Ugx 48,500,000.

Other pieces of evidence support the Valuer's assessment. Although purchased as a second hand vehicle from abroad, I find that the Plaintiff's motor vehicle was fairly new before the accident. The vehicle was only registered in the Republic of South Sudan on 09 January, 2020, as per PEX1 (vehicle license), only to be destroyed on 24th March, 2021, due to the Defendant's negligence.

The Plaintiff also testified that he had only driven the vehicle for about a year and three months. I believe him. In his testimony, PW2 (the expert witness) referred to PEX 6 which show the vehicle is a total wreck. PW2 also based on the fact that prior to the accident, the Plaintiff's motor vehicle was in a very good condition. I have also considered PEX7 (photograph of the pre accident vehicle), PEX 2 (vehicle Safety Certificate issued by the Republic of South Sudan), PEX 4 (Declaration of Temporary Import at Uganda Border in Elegu where the vehicle was

declared to URA by the Plaintiff) on 21st March, 2021, and PEX5 (Exit/ Release into Uganda by URA), and have come to the conclusion that the Plaintiff's motor vehicle was in a sound mechanical state before it was allowed to be driven into Uganda as a temporary import. This is further corroborated by PEX9 (Vehicle Inspection Report) issued by Uganda Police, dated 1st April, 2021, which formed the opinion that, the plaintiff's vehicle was not in a dangerous mechanical condition before the accident.

The Defense Valuation, with respect, lack basis. The Valuer, aside from not being qualified, the Valuation Report had gaps. It did not for instance consider tax that would be paid for any replacement vehicle. It also seems to me that, the value which DW2 came up with, with respect, was influenced by the Defendant, because, according to DW2, the Defendant informed him that the report was required for the purposes of compensating the Plaintiff for his destroyed motor vehicle. This could have led to a lower value, to minimize costs of replacement by the Defendant.

In the circumstances such as this, this Court is guided by section 43 of the Evidence Act Cap.6. Under the section, when court has to form an opinion upon a point of (inter alia) science or art, the opinions upon that point of persons especially skilled in that science or art, are relevant facts, and such persons are

called experts. In **Gatheru s/o Njagwara Vs. R [1954] 21 EACA 384** it was held that the competence of an expert should be shown before his evidence is admitted.

It is settled law that even Judges are experts of experts. However, they must use their discretion of accepting or rejecting expert evidence judiciously. See: **Onyango Vs. R [1969] E.A 362**.

In the Onyango case (*supra*), the East African Court of Appeal restated the principle of law that where expert opinion is given, court is free to give its opinion of that expert evidence, but it should be done after examining other evidence on record and all the circumstances of the case. If such other evidence supports the expert evidence, then evidence of opinion may be relied upon, to the courts discretion.

In **Mugisha Vs. Uganda (1976) HCB 246**, it was held that expert opinion is merely opinion evidence and it can rarely if ever take the place of substantive evidence. It is thus for the court to decide the issue one way or the other.

Bearing the above principles in mind, which are of general application to all cases, be it criminal, civil or otherwise, where expert evidence is concerned, and having considered the evidence adduced by each side to the litigation divide, it is my

finding that the Plaintiff proved, on the balance of probability, the claim of Ugx 48,500,000 as reasonable compensation for the vehicle destroyed in the accident by the Defendant. I hasten to observe that I found contradicting values counter proposed by the Defendant in his witness statement. The Defendant appear to sharply disagree with the value worked out by his own expert. The Defendant mentions Ugx 14,000,000 as the replacement value he would be happy to pay, of course much lower than an equally paltry amount of Ugx 18,000,000 presented by his expert. The Defendant at the same time claimed that the current market value of a similar vehicle as the Plaintiff's, goes for less than Ugx 25,000,000. This notwithstanding, the Defendant still had the courage to propose Ugx 14,000,000 as a fair compensation to the Plaintiff. The basis for this figure, in his own words, is from unnamed persons whom the Defendant claim had purchased similar vehicles. The Defendant said he met the unnamed persons at Kitgum Bus Park. Interestingly, Counsel for the Defendant, in his submission, proposed the figure returned by the Defendant's expert Valuers. With the greatest respect, I do not accept the invitation. If the Defendant felt it so cheap to replace the destroyed vehicle, then he had all the opportunity of buying one to replace it, without the need for litigation. This Court cannot award an amount which would fall short of purchasing a vehicle of equal condition as the pre-accident vehicle of the Plaintiff. I also think the Defendant does

not know the fair replacement market value for the Plaintiff's vehicle or may be he is simply not honest about it.

I further note the claim by the Defendant that the Plaintiff's vehicle was not in a sound mechanical state before the accident. I find this claim to be simply an afterthought. The Defendant conceded, he was not a mechanic and did not assess the vehicle condition before driving it. I believe that the Defendant first wanted to deny liability, but changed heart, perhaps given the weight of the evidence assembled at the scheduling conference, as per the Plaintiff's trial bundle and the witness statement. I, therefore, accept the Plaintiff's claim and reject the Defendant's denial. If at all the vehicle was in a bad condition as the Defendant wishes court to believe, the Defendant should not have driven it. I find it was not. In any case, the vehicle was able to be driven to Gulu City in Uganda, via Elegu, from South Sudan without any evidence of breakage on the way, meaning, it was in a sound mechanical condition. The Plaintiff's vehicle was only serviced and wheel-balanced when it reached Gulu on 21st March, 2021, at Gaz Fuel Station, as per PW1, and PEX7. In my Judgment, I find that the service done no the vehicle was of the routine nature thus expected, especially if the vehicle has covered good mileage, as was the case instant. The vehicle had just arrived from Juba. The service was thus expected, especially of a caring vehicle owner/ driver, this being a notorious fact.

In the upshot, I award the Plaintiff special damages of Ugx 48,500,000 being the replacement value of his destroyed motor vehicle SSD 662 AN, Suzuki Escudo, Black in Colour, Chassis No. TD54W109780, which according to the Ugandan Police Report (PEX9), is a total wreck and written off. I accept this lesser replacement value presented by the Plaintiff's expert, although the Plaintiff had earlier pleaded and prepared his witness statement on the basis of a higher value of Ugx. 76,240,000. He explained the basis for his shift in position. The Plaintiff is entitled to the lesser value given by the expert Valuer.

In **Uganda Commercial Bank Vs. Deo Kigozi [2002]1 E.A 305 (CAU)** the Court of Appeal of Uganda (per Twinomujuni, J.A (RIP), at p.314, held that, a Court is entitled to award a lesser figure than what was pleaded if it is satisfied that the lesser amount was proved. I am so satisfied.

Regarding the claim for expenses allegedly incurred by the Plaintiff, in hiring alternative transport, as noted, the Plaintiff claimed for Ugx 4,320,000 he said he spent on vehicle hire in Uganda. He further claimed for USD 1520 allegedly spent on motor vehicle hire in South Sudan. Although the Plaintiff specified the number of days he said he hired alternative transport both here and abroad, he failed to give details of the vehicles hired and the names of the persons he hired from. No documentary evidence, be it receipt or hire agreement, was

adduced in evidence. In this case, although oral evidence would suffice, the crucial details about the alleged hire, is missing.

In matters of special damages, where documentary evidence is lacking, the plaintiff should at least be able to lead cogent oral evidence to raise the inference that the expenses were incurred. Short of that, a defaulting party should be content with an award of general damages, where proved.

In the instant case, although it is true the plaintiff was deprived of the use of his vehicle, and naturally had to move around while in Uganda, to follow up the matter with the Traffic Police in Orom, Kitgum District, plus other movements, such as taking a Valuer where the wreck is kept, this Court is left in a state of uncertainty as to the exact amounts spent. It is highly probable that the Plaintiff used public means, which, notoriously is fairly cheaper than a private car hire. In the circumstances, I am left in an uncomfortable position of merely conjecturing, which has no place in adjudication. In my respectful view, the Defendant's non-rebuttal and silence in his evidence on this issue, does not mean the Plaintiff would simply have his claims. Of course, I note the belated objection to the claim in submission by the Defense.

In the circumstances, the claim for special damages of Ugx 4,320,000 allegedly incurred in Uganda, and USD 1520 allegedly suffered in South Sudan, fails for lack of cogent proof.

General damages

The plaintiff sought for general damages of Ugx 60,000,000. He testified that he was inconvenienced as his car was smashed and rendered a wreck by the Defendant. He stated he was subjected to the trouble of hiring alternative means of transport and had to retrieve the vehicle from the accident scene and take to Orom Police Station. He stated, he searched for the Defendant's whereabouts, who had first become evasive. The Plaintiff testified that his pleas to the Defendant to compensate him with another vehicle of similar condition as his pre-accident vehicle, were ignored. He therefore, suffered psychological torture and mental anguish, resulting from the defendant's negligence, he asserted.

The Defendant did not strongly contest the above pieces of evidence. The Defendant however submitted that since he admitted liability from the onset, and what was left was for a professional valuer to assess the value of the vehicle, the prayer for general damages should fail. With respect, I think this argument misses the point. The principles for award of general damages are well laid out in a plethora of authorities.

The law on general damages is that, it is compensatory in nature, and are intended to make good to the aggrieved party, as far as money can do, for the losses he or she has suffered as the natural result of the wrong done to him or her. See: **Robert Coussens Vs. Attorney General, Civil Appeal No. 8 of 1999**; **Okello James Vs. Attorney General, HCCS No. 574 of 2003; Charles Angina Vs. Diamond Trust Bank Ltd & 2 Others, HCCS No. 76 of 2018 (Per Wangutusi, J.); V.R Chande Vs. East African Railways Corporation (1964) E.A 78; Bank of Uganda Vs. F.W Masaba & Others, SCCA No. 3 of 1998.**

According to **Halsbury's Laws of England, 4th Ed. Vol. 12 (1) paragraph 812**, general damages are those losses, usually but not exclusively non- pecuniary, which are not capable of precise quantification in monetary terms. They are presumed to be the natural or probable consequence of the wrong complained of, with the result that the plaintiff is only required to assert that such damage has been suffered.

However, in **Kibimba Rice Co. Ltd Vs. Umar Salim, SCCA No. 7 of 1988**, the Supreme Court of Uganda held that evidence had to be led to prove claims for general damages for inconvenience, mental suffering and anguish.

Regarding the amount of general damages, it is in the discretion of the court, based on the circumstances of each case. See:

Crown Beverages Ltd Vs. Sendu Edward, SCCA No. 1 of 2005.

In Robert Coussens Vs. Attorney General (supra), it was held that the measure of general damages is that sum that will put the party who has been injured, or who has suffered, in the same position as he would have been, if he had not sustained the wrong for which he is now getting his compensation or reparation. **See: Livingstone Vs. Ronoyard's Coal Co. (1880) 5. App. Cas 259** which was cited with approval by the Supreme Court of Uganda.

In considering general damages court may take into account factors such as malice or arrogance on the part of the Defendant and the injury suffered by the Plaintiff, for example, causing him stress.

In the present case, the Plaintiff has adduced ample evidence entitling him to an award of general damages. The Defendant, a friend, requested to drive the Plaintiff's Suzuki Escudo, on 24th March, 2021. He wanted to drive to Akilok Centre in Orom Sub County, Kitgum District, to inspect his business. The Plaintiff who had just arrived in Uganda three days earlier, from South Sudan, obliged. The Defendant had promised he would return the vehicle after three hours, from about 12:00 noon. This did not happen. A call to his known phone number did not go

through. The Defendant was only accessed on phone at 4:00 pm through a friend known to the Plaintiff, a one 'Doctor'. The Defendant promised to return the vehicle soon to the Plaintiff, that day. The Plaintiff did not hear again from the Defendant until 25th March, 2021, when the Plaintiff physically searched for the Defendant, as his known telephone contacts were switched off. It was during the search that the Plaintiff found the vehicle dumped at a road side, between the area of Orom Centre and Namukora (Kitgum District), in a state of wreckage. The Plaintiff photographed the wreckage. Searching for the Defendant, he couldn't be found, hence the report to Kitgum Police *vide* TFP 09/25/03/21. The Plaintiff returned to Gulu, to get the services of Inspector of Vehicles, to inspect the wreck. The vehicle was later towed to Orom Police Post. The Plaintiff also took the Valuer to Kitgum, to do his work. The Plaintiff must have gone through rough time, without a vehicle. Naturally, he was inconvenienced as he had to resort to whatever alternative transport in his movements. Although I found that he failed to prove the vehicles allegedly hired as alternative transport and the exact amounts spent, I agree, he must have suffered inconveniences and mental anguish, given the circumstances. He said he was stressed. I believe him, as the factual circumstances detailed, would naturally cause stress. I am satisfied the Plaintiff has made a case for award general damages flowing from the Defendant's negligence.

On the quantum, I find the amount proposed, being Ugx 60,000,000 rather exaggerated. That amount would buy another vehicle and leave the Plaintiff with a pocket change. Learned counsel did not address me on recent awards in similar circumstances. I note that although he spent money to obtain the vehicle inspection report, and to get the services of Valuers, which are evidenced vide PEX 8, and PEX11, the Plaintiff did not claim them as special damages, I suppose he left it out inadvertently. I have not awarded them, in this Judgment. These expenses, and others not awarded, however go to show that the Plaintiff must have suffered some stress and inconveniences. Doing the best in the circumstances, and given that it is two years since he lost his vehicle in the accident and which remains to be compensated by the Defendant, but also considering that the vehicle was given to be driven on friendly terms, I award the Plaintiff general damages of Ugx 10,000,000 which I consider to be neither too high nor too low.

Interest

The Plaintiff prayed for interest of 30% per annum on special damages, from the date of filing the suit. He also prayed for 30% p.a on general damages, from the date of Judgment till payment in full. For the Defense, interest at 6% per annum, was proposed, on any court awards.

Award of interest is provided for in section 26 of the Civil Procedure Act. Section 26 (1) applies where there is an agreed rate of interest. This is not the case here. Thus the matter is governed by section 26 (2) where it is left to the Court's exercise of judicial discretion to award interest. See: **Kinyera George Candano Vs. The Management Committee of Laroo Building Primary School, HCCS No. 099 of 2013, per Justice Henry Peter Adonyo, J.**

The basis of the award is that the defendant had kept and used the plaintiff's money for his personal needs and therefore ought to be compensated for it. See: **Sietco Vs. Noble Builders (U) Ltd, SCCA No. 31 of 1995.** That case applied with approval, the principle in **Harbutts' Plasticine Ltd Vs. Wayne Tank & Pump Co. Ltd (1970) 1 QB 447**, where Lord Denning had this to say,

"An award of interest is discretionary. It seems to me that the basis of an award of interest rate is that the Defendant has kept the Plaintiff of the use of his money, and the Defendant has had the use of it himself. So he ought to compensate the Plaintiff accordingly."

In **Masembe Vs. Sugar Corporation & another [2002] 2 E.A 434 at 453,** Oder, JSC (Rip) held that, the award of interest by a Court was governed by section 26 (2) of the Civil Procedure

Act which clothes the Courts with discretion as to what rate of interest to award.

A higher rate of interest is usually charged where someone holds another person's money, to that person's detriment. **Sietco Vs. Noble Builders (U) Ltd, SCCA No. 31 of 1995 (supra.)**

On the facts, I find that the Plaintiff is entitled to interest on the head of damages. Interest in my view, also takes care of the time value of money, and any delays that may arise in the payment of any Court awards.

Regarding the rate of interest, I find the 30% p.a proposed for the Plaintiff, unconscionable and unjustified. It would amount to punishment yet interest is never awarded by way of punishment. See: **Attorney General Vs. Virchand Mithalal & Sons, SCCA No. 20 of 2007 (Kenyeihamba, JSC)** which was followed in **British American Tobacco (U) Ltd Vs. Sedrach Mwijakubi & 4 others, Civil Appeal No. 01 of 2012 by Odoki, CJ)**, with whom the rest of the Court agreed.

On the other hand, I also find the 6% per annum interest counter-proposed by the Defendant, very low. In the circumstances, I award the interest of 15% per annum on

special damages of Ugx 48,500,000, from the date of this Judgment till payment in full.

Regarding the rate of interest on general damages of Ugx 10,000,000, I reject the rate of 30% per annum proposed, as well as the 6% per annum counter-proposed, and award interest of 8 percent per annum, from the date of the Judgment till full payment.

Costs

The Plaintiff prayed for costs of the suit, under section 27 of the Civil Procedure Act, plus interest on costs.

In this case, I find no reason to deny the Plaintiff costs of the suit, as it is not shown that his conduct, either prior or during the conduct of the suit, has led to this litigation which might have been averted. On the contrary, it is the Defendant's conduct which led to this litigation. See: **Devram Nanji Dattani Vs. Haridas Kalidas Dawda, 16, EACA 35**.

See: Also the passage by Lord Atkinson in **Donald Campbell Vs. Pollak, [1927] A.C 732**, thus,

"it is well established that when the decision of such a matter as the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried his

case, that discretion is a judicial discretion, and if it be so, its exercise must be based on facts...if, however, there to, in fact, some grounds to support the exercise by the trial Judge of the discretion he purports to exercise, the question of the sufficiency of those grounds for this purpose is entirely a matter for the Judge himself to decide and the Court of Appeal will not interfere with his discretion in that instance."

In the circumstances, I award costs of the suit to the Plaintiff.

Regarding interest on costs, whereas under section 27 (3) of the Civil Procedure Act Cap. 71, Court may award interest on costs at any rate not exceeding six percent per year, it has been held by the then East African Court of Appeal in **Hassanali Vs. City Motor Accessories Ltd & others, [1972] E.A 423 (Spry, V-P., Lutta and Mustafa, JJA)** that, it is not the normal practice to award interest on costs and there was no warrant for a departure from that practice.

In the present case, therefore, I, too, follow the well-trodden path, and decline the invitation to award interest on costs, in the absence of a clear justification.

In the final result, the Plaintiff's suit succeeds, on the terms proposed herein.

Delivered, dated and signed in Chambers this 26th day of April, 2023.

26/4/2023

George Okello

JUDGE HIGH COURT

Judgment read in Chambers.

12:24pm

26th April, 2023

Attendance

Ms. Grace Avola, Court Clerk.

The Parties in Court.

Ms. Aloyo Rebecca, holding brief for Mr. Openy Samuel, Counsel for the Defendant.

Counsel for the Plaintiff absent.

Court: Judgment read in Chambers.

Hkotdm. 26.04.2023

George Okello

JUDGE HIGH COURT