

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL APPEAL NO. 91 OF 2020

(Arising from Nakawa Chief Magistrate Civil Suit No. 43 OF 2016)

MARGARET MUKURU ===== APPELLANT

VERSUS

SILVIA KAVUMA ALIU ===== RESPONDENT

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

JUDGMENT.

Background.

This is an appeal arising from the judgment and orders of Her Worship Kabugho Byakutaga Caroline a Principle Magistrate Grade One at Luzira Magistrates Court dated 18th August 2020.

The Respondent (**formerly Plaintiffs**) filed Civil Suit No. 43 of 2016, against the Appellant (**formerly 2nd Defendant**) for breach of contract, special damages, general damages, interest and costs of the suit. The trial court ruled in favour of the Respondent (**formerly plaintiff**).

The Appellant being dissatisfied with the judgment and orders of the trial Magistrate appealed to this Court.

Grounds of appeal.

- 1. The learned trial Magistrate erred in law and fact by failing to evaluate the evidence as a whole especially as pertaining to the sale of vehicle between the appellant and the Respondent thereby arriving at a wrong conclusion which occasioned a miscarriage of justice to the Appellant.*

2. *The learned trial Magistrate erred in law and fact in holding that the Appellant was indebted to the Respondent to the tune of Ugx 14,500,000/= arising from a motor vehicle sale, which occasioned miscarriage of justice.*
3. *The learned trial Magistrate erred in law and fact in awarding general and punitive damages against the Appellant by using wrong principles of law which occasioned miscarriage of justice.*

However, when the case came up for hearing both counsel agreed to raise issues for court's determination in this appeal. Counsel for the Appellant raised three issues in his written submission to the effect that;

1. *Whether or not, the sale of motor vehicle was in exchange for 5% shares valued at Ugx. 15,000,000/=.*
2. *Whether or not, the award in general and punitive damages were excessive.*
3. *What remedies are available to the parties.*

Legal Representation.

Mr. Mangeni Peter Osirya of Masereka, Mangeni & Co. Advocates represented the Appellant while Mr. Sebanja Abubaker of M/S Sebanja & Co. Advocates represented the Respondent.

Duty of first Appellant Court.

The duty of the first appellate court was stated in the case of **Kifamunte Henry Vs Uganda SC, (Cr) Appeal No. 10 of 2007**, where it was held that;

"...the first appellate court has a duty to review the evidence of the case, to reconsider the materials before the trial judge and makeup 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 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.

When this case came up for hearing both Counsel agreed to file written submission.

Counsel for the Appellants argued the 3 issues raised separately.

Submissions by counsel for the Appellants on issue 1.

Whether or not, the sale of motor vehicle was in exchange for 5% shares valued at Ugx. 15,000,000/=.

Counsel for the Respondent submitted that the Respondent in the trial court failed to establish a breach based on the memorandum of allotment of shares as found by the trial court and therefore could not succeed on breach of a car sale agreement which she did not plead in her pleadings.

Counsel referred to the case of **Inter Freight Forwarders (U) Ltd Vs East African Development Bank (1990-1995) EA 117** to the effect that; -

“parties are bound by their pleadings”.

Counsel submitted that PED3 was never pleaded and was only exhibited after cross examination. PED3 clearly points to the existence of a separate and independent transaction between the appellant and the respondent for sale of the vehicle in question for Ugx 14,000,000/= and makes no mention whatsoever of shares in relation to PED1 for which the breach is alleged. It is worth noting that the document as to the sale of the motor vehicle is a day after the appellant is alleged to have failed to honour the signing of PED1. Even then, no attempt is made to link PED1 to PED3 if at all the transactions are intertwined as the respondent alleged.

Counsel referred to the case of **Paineto Semalulu Vs Nakitto Eva Kasule HCCA NO. 4 OF 2008** where court held that;

“No pleadings shall, not being a petition or application, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading that pleading”.

Counsel faulted the learned trial magistrate for finding breach of PED3 a completely separate transaction which was never pleaded in the plaint.

Issue 2

Whether or not, the award in general and punitive damages were excessive.

Counsel for the Appellant submitted that general damages are awarded at the discretion of court where it is proved that a party suffered loss or harm as a result of

another's action. Awarding 6,000,000/= for a claim of Ugx 14,000,000/= that was never pleaded was an error and excessive.

Counsel referred to the case of **Greenboart Vs City Council of Kampala (2007) ULR 554** where it was held that;

“Evidence must be led to show that the plaintiff suffered inconvenience and has been deprived of a contract”.

Counsel submitted that punitive damages are awarded as a punishment and in this case the award of 2,000,000/= is misconceived since there was no breach of the contract.

Issue 3

What remedies are available to the parties.

Counsel submitted that, since the trial Magistrate answered the issue of breach of contract in the negative, the claim ought to be dismissed since there was no claim for breach in respect of PED3.

Submissions by Counsel for the Respondent on issue 1

Whether or not, the sale of motor vehicle was in exchange for 5% shares valued at Ugx. 15,000,000/=.

Counsel for the Respondent submitted that the sale of the Respondent's Motor Vehicle Toyota Ipsum Reg No. UAP 345V was in exchange for the 5% shares valued at a sum of Ug Shs. 15,000,000/=. That the Respondent claim in the lower court was for failure to allocate shares by the Appellant after receiving the Motor Vehicle.

Counsel submitted that the Respondent's claim was reinforced by other documents like the memorandum of allotment of shares and Memorandum acknowledging receipt of legal fees prepared by the Appellant's lawyers by then M/S Seguya & Co. Advocates Exhibits PED1 & PED2.

Counsel submitted that the Respondent's evidence was never contested or controverted because no witness was produced for the defence.

Issue 2

Whether or not, the award in general and punitive damages were excessive.

Counsel for the Respondent submitted that as a general rule, General damages and punitive damages are awarded at court's discretion.

Counsel referred to the case of **Kampala District Land Board & George Mitala Vs Venannsio Bweyana CA No. 2 of 2007** where court held that;

“It is trite law that damages are direct and probable consequences of the act complained of.”

There must be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering.

Counsel referred to the case of **Kamugira Vs National Housing & Construction Co. HCCS No. 127 of 2008** where court held that;

“A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the same position he or she would have been in if it wasn't for the breach. The party claiming general damages is expected to lead evidence or give an indication that to what damages should be awarded on inquiry as the quantum”.

Issue 3

What remedies are available to the parties.

Counsel submitted that the Respondent is entitled to damages and compensation for the breach of the contract.

Counsel referred to **section 61(1) of the contracts Act** which empowers court to award compensation for any loss or damages caused to one party due to another's breach of contract.

Analysis of court.

Issue No. 1

Whether or not, the sale of motor vehicle was in exchange for 5% shares valued at Ugx. 15,000,000/=.

Section 10 (1) of the Contract Act defines a contract as;

"A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound".

The basic elements required for the agreement to be a legally enforceable contract are: mutual assent, expressed by a valid offer and acceptance; adequate consideration; capacity; and legality.

In the case of **Stanbic Bank Uganda Limited Versus Haji Yahaya Sekalega T/A Sekalega Enterprises High Court Civil Suit No. 185 of 2009 at page 6** court observed that;

"A breach of contract is the breaking of the obligation which a contract imposes which confers a right of action in damages to the injured party. It entitles him to treat the contract as discharged if the other party renounces the contract or makes performance impossible or substantially fails to perform his promise."

In the instant case, PW1 the Respondent herself testified that in March 2015 she entered into an agreement for purchase of 5 shares in the Appellant company (1st defendant) in exchange for her Motor Vehicle Toyota Ipsum Reg. No. UAP 345V valued at 15,000,000/= (fifteen million shillings).

The Respondent and Appellant agreed to meet the legal fees. Upon payment of 15,000,000/= the Appellant who is the director in the company was supposed to sign and file a transfer and allocation of shares to the Respondent with the Registrar of Companies which she refused to do.

The memorandum for allocation of shares was admitted in evidence and marked PED1 and the memorandum of acknowledgment of receipt was admitted and marked PED2 while the agreement for sell of Motor Vehicle Reg. No. UAP 345V between

the Respondent and Appellant dated 25th March 2015 was admitted and marked PED3 and the same contains 14,000,000/= (Fourteen million shillings).

The Appellant did not sign on the memorandum of allotment of shares claiming she was very busy.

This evidence was not shaken in cross examination and the Appellant opted not to give evidence.

It is a well- established principle that, in general, a party must challenge in cross-examination the evidence of any witness of the opposing party if he/she wishes to argue that evidence given on a particular issue should not be accepted. **See Browne v Dunn (1894) 6 R. 67, HL.**

From the evidence given, it is clear that the Appellant did not sign on the memorandum for allotment of shares to bind the company but signed on the car sell agreement and received the 14,000,000/= (Fourteen millions) in her personal capacity. She later turned around and refused to effect the transfer which amounts to breach of a contract.

The Respondent also proved payment of 500,000/= (Five Hundred thousand shillings) to the advocate to draft the Memorandum of allotment of shares.

It was therefore appropriate for the trial court to order the Appellant to pay the money in her personal capacity since she received the same as money had and received and I have nothing to fault the finding of the trial court.

Issue No. 2

Whether or not, the award of general and punitive damages were excessive.

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.

As was held in the case of **Byabalema & 2 Others vs UTC (1975) Ltd SCCA NO. 7 OF 1993** that;-

“It is now a well settled principle that an appellate Court may only interfere with an award of damages when it is inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on the wrong principle or that he misapprehended the evidence in some material respect and so arrived at a figure which was inordinately high or low.”

In this instant case, the Respondent lost her motor vehicle to the Appellant as a result she suffered damage.

The trial Magistrate awarded general damages of 6,000,000/=. This award is discretionary and the appellate court can only interfere with such an award if its excessive or based on wrong principles of the law.

I find the award of 6,000, 000/= as general damages by the trial Magistrate appropriate, I don't find any reason to justify alteration of the same.

Unlike general and aggravated damages, punitive damages focus on the defendant's misconduct and not the injury or loss suffered by the plaintiff. They are in the nature of a fine to appease the victim and discourage revenge and to warn society that similar conduct will always be an affront to society and also the court's sense of decency. They may also be awarded to prevent unjust enrichment. They are awardable with restraint and in exceptional cases, because punishment, ought, as much as possible, to be confined to criminal law and not the civil law of tort and contract. **See *Rookes Vs Barnard [1964] ALLER at 410, 411.***

In cases of breach of contract, the position of the law has tended to be that punitive/exemplary damages are awardable in respect of a breach of contract, where the breach involves a tort in the course of or in relation to the breach. Thus in reality punitive/exemplary damages are awardable in respect of the tort and not the breach of contract per se. See ***Uganda Revenue Authority Vs Wanume David katamirike SCCA No.3 of 1993.***

In this instant case, the breach did not involve any tort to warrant a fine. It was accordingly wrong for the trial Magistrate to award punitive damages and the same is hereby set aside.

Issue No. 3

What remedies are available to the parties.

The Respondent is entitled to the remedies granted in the lower court with the exclusion of punitive damages.

Conclusion.

In the final result, I uphold the decision of the trial court with the following variations.

1. The judgment and decree of the trial court are upheld.
2. punitive damages of 2.000.000/= is set aside.
3. Since the appeal partially succeeds, each party shall bare their own costs.

Dated, signed, sealed and delivered by email at Kampala this **27th** day of **March 2023**

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Emmanuel Baguma

Judge