

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA
LAND DIVISION
CIVIL SUIT NO 735 OF 2007

MAKONYA PROPERTIES LTD.....PLAINTIFF

VERSUS

ATTORNEY GENERAL.....DEFENDANT

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

JUDGEMENT

The plaintiff instituted this suit against the defendant for an order for the return of certificate of title for property comprised in LRV 58 Folio 17 Plot 25 at Namirembe (suit property), general damages and costs of the suit. The original suit was in the names of **Raj Rani** as the plaintiff. The plaint was later amended and the plaintiff's name was substituted by that of **Makonya Properties Ltd.**

The plaintiffs' case is that sometime in May 2003, the plaintiff's certificate of title for the suit property was handed over to Ministry of Works Transport and Communications officials by M/s Yovani Hotel who have an equitable interest in the suit property. The said title was handed over for purposes of sub division and thereafter obtaining a certificate of title for 0.0083 hectares that had been apportioned for the Bakuli – Nateete road project. Despite requests to have the certificate of title returned the ministry officials failed and or refused to do so. A search conducted at the Land Registry on 22nd March 2007 revealed that no sub division had been made as of the said date. The plaintiff as a result suffered great inconvenience for which she holds the defendant vicariously liable by virtue of the operation of the government. Subsequently however, after the suit had been filed, the certificate of title to the suit property was handed over to the plaintiff after a period of nine years.

The defendant never filed a defence to this suit but his representative appeared in court and participated in a scheduling conference where the following facts were agreed on:-

1. The suit property is registered in the names of the plaintiff.
2. In 2002 the certificate of title for the suit property was handed over to officials of the Ministry of Works, Transport and Communications.
3. The certificate of title for the residue was returned to the plaintiff.

The plaintiff led the evidence of one witness, Henry Milton Bonima Macmot, the managing director of the plaintiff, on 7th November 2012. The defendant's counsel attended this first day of the hearing when the said witness was being examined in chief by his counsel. The defendant's counsel again appeared in court on 23rd January 2013, but the hearing could not proceed as the counsel holding brief for the plaintiff's counsel requested for an adjournment. The matter was again called for hearing on 29th April

2013 but it had to be adjourned as the defendant's counsel was absent. In the interests of justice court directed that fresh hearing notices for 21st March 2013 at 11 am be served on the defendant's counsel by the plaintiff's counsel and an affidavit of service to that effect be filed. The defendant's counsel did not appear in court on the said date. The record indicates that the defendant was duly served with the hearing notice and the state attorney in personal conduct of the case accepted service by stamping and signing on the copy of the hearing notice. This court therefore granted the plaintiff's counsel's prayer to proceed *ex parte* for the rest of the hearing.

It is important to state at this point that it was an agreed fact, which also came out clearly in the testimony of the the plaintiff's managing director, that the certificate of title for the residue was eventually returned to the plaintiff after the filing of this case. This therefore rendered the plaintiff's prayer for the return of certificate of title for the suit property as being overtaken by events. As such no issue was framed on it, and no orders will be made regarding the same. The issues for determination therefore were:

1. Whether the plaintiff is entitled to general damages?
2. What other remedies are available to the plaintiff?

It may also be pointed out, before delving into discussion of the issues that this court's ordering of the matter to proceed *ex parte* was on basis of Order 9 rule 20 of the CPR which provides that where a defendant does not appear when the suit is called for hearing, if the court is satisfied that the summons or notice of hearing was duly served, it may proceed *ex parte*. However, whether a case proceeds *ex parte* or not, the burden on the part of the plaintiff to prove the case to the requisite standards remains, as was held in **Yoswa Kityo V Eriya Kaddu [1982] HCB 58**.

Counsel filed written submissions after the trial.

Issue 1: Whether the plaintiff is entitled to general damages?

The plaintiff prayed for general damages arising out of the loss of income he suffered as a result of the defendant keeping his title for a long time.

It is trite law that damages are the direct probable consequences of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. Damages must be prayed and proved. See **Kampala District Land Board & George Mitala V Venansio Babweyana SCCA 2/2007**; **Dian GF International Ltd V Damco Logistics Ltd & Trantrack HCCS 161/2010**. The plaintiff who suffers damages due to the wrongful act of the defendant must be put in the position he would have been had he not suffered the wrong, as was held in **Dennis Lwamafa V Attorney General [1992] KALR 21**. In **Rober Coussens V Attorney General SCCA 8/1999** where the appellant claimed damages arising out of loss of income due to gunshots from members of the Uganda Police Force who mistook him for a thief, Oder JSC (RIP) held that the object of damages is to give the plaintiff compensation for the damage, loss or injury he/she has suffered. He categorised damages into pecuniary and non pecuniary, the former comprising of all financial and material loss of business profit and income, and the latter representing all losses not representing inroad upon a person's financial or material assets such as physical pain or injury to feelings. Also see **A. K. P. M Lutaaya V Attorney General Civil Appeal No. 2/2005**.

The plaintiff's managing director testified on oath that on 25/02/2003 Engineer Oloya of Ministry of Works asked him for his title to the suit property, exhibit **P1** for a road expansion. He later received a letter from the Permanent Secretary of Works offering him a sum of Ug. Shs. 5,347,500/= as compensation for part of the suit property that government was taking. On 22/05/2003 he handed over the certificate of title against which he was paid the compensation as per exhibit **P3**. He also testified on oath that the title was with the Ministry of Works for over nine years as a result of which he lost income and business opportunities. He testified that he attempted various times to get the title in vain. He wrote a letter dated 15/09/2005, exhibit **P4** requesting the responsible Permanent Secretary to release his title, but he received no reply or acknowledgement. He wrote another letter dated 08/08/2006 exhibit **P5** to the Permanent Secretary who replied assuring him in exhibit **P6** that he would return the title.

The plaintiff's managing director produced in court exhibit **P7** a sketch of the original building plans, and the improved building plans exhibit **P9** which were essentially to make the rooms in his hotel self contained in preparation for the Commonwealth Heads of State Conference. He failed to make the improvements on the hotel on account of not having money. He could have borrowed money and used the title as security but the title was not returned to him until 23/04/2012. He testified on oath that as a result, the building became dilapidated. He showed this court photographs of the dilapidated building, exhibit **P12**. He testified that this affected the plaintiff's income as he had to charge low rates averaging Ug. Shs. 90,000/= per room. He testified that he suffered great humiliation of being associated with a dilapidated building as a former government minister.

The plaintiff's managing director's evidence as adduced under oath has not been controverted by the defendant. I am satisfied that the plaintiff has satisfied their claim against the defendant on the balance of probabilities. This entitles the plaintiff to an award for general damages since it has proved to this court that between 22nd May 2003 when its title was handed over to the government and 23rd April 2012 when they returned it, it was denied use of their land. The plaintiff has adduced evidence that it suffered inconvenience in terms of trying to regain their certificate of title in vain and in terms of the loss of income and humiliation suffered by its managing director.

In **A. K. P. M Lutaaya V Attorney General Civil Appeal No. 2/2005**, already cited, the court of appeal awarded Ug. Shs. 100,000,000/= (one hundred million) on basis of the great expense, time wasted and disorganisation of the plaintiff arising from the defendant's wrong where their soldiers invaded his tree plantation of three hundred acres. The circumstances in that case are materially similar to this case. Considering that the land is based in Bakuli, a suburb of Kampala where prospects for business including hotel accommodation are promising, the plaintiff deserves substantial general damages for the income and inconveniences they incurred during the time he was denied use of the certificate of title. I would, the circumstances, award the plaintiff general damages of Ug. Shs.80,000,000/= (eighty thousand million).

Issue 2: What other remedies are available to the plaintiff?

The plaintiff's counsel submitted that the plaintiff prayed court to award interest on the general damages from the date of payment till payment in full. The amended plaint however did not make such prayer, nor did the plaintiff pray for the same in his sworn oral testimony before this court. With respect to counsel, this court cannot grant prayers that have not been made by the plaintiff. In **Uganda Revenue Authority V Wanume David Kitamirike Civil Appeal No. 43 of 2010** the Court of Appeal declined to award interest where it was not pleaded let alone evidence being adduced to that effect.

The plaintiff also prayed for costs of this suit. His counsel submitted that the plaintiff is entitled to costs if he is successful in the suit, since costs follow the event. He also submitted that the plaintiff seeks interest on costs under section 27(3) of the Civil Procedure Act.

Section 27(1) of the Civil Procedure Act provides that the costs of and incident to all suits shall be in the discretion of the court or judge. Section 27(2) of the same Act provides that the costs of any action cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order. In this case the decision is clearly in favour of the plaintiff. I have no reason to deny the plaintiff his entitlement to costs as a successful party in this matter. However I will not grant interest on the costs. Other than his counsel who submitted on the same, the plaintiff neither prayed for nor adduced evidence to justify the grant of interest on the costs.

Accordingly, judgement is entered for the plaintiff against the defendant for the following declarations and orders:-

- i) General damages of Ug. Shs.80,000,000/= (eighty million)
- ii) Costs of the suit are awarded to the plaintiff.

It is so ordered.

Dated at Kampala this 11th day of July 2013.

Percy Night Tuhaise.

JUDGE.