

The evidence on record was as follows:

PW1: Nabwire Jane who said she bought the land on 5th February 2007 at Shs 200,000/= and a sale agreement that; tendered as PE1, PE2 was tendered to prove that the defendant agreed to refund 1,900,000/= and interest of Shs 1,000,000/=; being refund of interest for the demolished houses.

PW2 Otenge Noah confirmed the fact that plaintiff bought the land from defendant. He was the general secretary of LC1 at the time and witnessed on the agreement. He confirmed that defendant later trespassed on the land and demolished plaintiff's houses thereon.

PW3: Emunget Wilberforce said defendant sold the land to the plaintiff, plaintiff took possession and later defendant trespassed thereon.

PW4 Valeriano Ofemba, also said plaintiff bought from defendant. He witnessed the purchase; and participated in measuring the suit land.

DW1: Okongo Sinambio said the land was given to plaintiff by his mother **Adikin Rebecca** for temporary settlement. Plaintiff later wanted to sell the land then the mother chased her away. Later matter was reported to police and defendant forced to sign the agreement for refund of Shs 1,900,000/= plus interest.

DW2- Okotche Getrude confirmed DW1's statement above.

DW3- Okumu Sinambio , said that clan sat and plaintiff was ordered to vacate the suit land as her agreement was forged.

Court visited locus and made observations and took down evidence thereat.

At close of the hearing court found in favour of the plaintiff/ Respondent hence this appeal.

I now determine the grounds of appeal as follows:

Ground1: Failure to evaluate evidence

The appellant's counsel contended that the learned trial Magistrate ought to have found from the evidence on record that the seller of the land had no title or ownership to the land sold. He argued that the sale was illegal and the transaction should not be condoned by court.

The Respondent's counsel however reviewed all evidence and argued that the learned trial Magistrate was right in his findings.

I have examined the evidence. The evidence Act Sections 101, 102,103 requires he who alleges a fact to prove it. The plaintiff had the burden to prove that the land was hers and defendant trespassed thereon.

The plaintiff led evidence of PW1, PW2, PW3, PW4, PE1 and PE2 to prove this fact.

This evidence was further buttressed by court's own findings and observations at locus. The defendant though DW1, DW2 and DW3 acknowledged that the plaintiff was using the land and attempted to sale it which angered defendant's mother and she chased the plaintiff. The defendant denied PE1 as forged and PE2 as being obtained under duress.

The question to ask here is whether evidence by plaintiff and her witnesses was cogent and truthful as regards this sale given the evidential burden incumbent upon plaintiff to prove the allegations in the plaint. This is juxataposd against the defendant's evidence, in proof of his case. Did defendant demonstrate by evidence that plaintiff was not the owner of the land? The key witness for defence was DW1. He however failed to satisfactorily explain why

he authored PE.2. This document created a nexus between PW.1 and her witnesses, allegations and defendant. There was no evidence to prove that PE.1 was forged. The defendant had the burden to lead evidence to put PE1 to question and prove that it was forged. Save alleging that PE1 is forged there is nothing on record in proof. Similarly I do find that PE2 was good evidence for plaintiff to show that the defendant had made it in recognition of the fact that he had trespassed and damaged plaintiff's houses on the land. No contrary evidence is on record to show that PE2 was obtained under duress. Under sections 101,102 & 103 Evidence Act, the defendant ought to have led evidence of such torture at police.

In view of all evidence on record, I am in agreement with defendant's counsel that the learned trial Magistrate evaluated the evidence properly and reached a right decision. Ground 1 therefore fails.

Ground 2 and 3 were not argued and hence were moot and not proved.

Ground 4: Award of damages

Appellant argues that the learned trial Magistrate erred in awarding damages without proof of the same.

I notice that learned trial Magistrate awarded Shs 2,000,000/= as general damages.

General damages are the direct natural or probable consequence of the act complained of per *Strons V Hutchinson (1905) AC 515*.

Damages are awarded by discretion of the court. The fundamental principle in assessment of damages that guide courts is the common law doctrine of *restitutio intergrum*, as laid down in the case of *Dharanishi v Karsan [1974] EA 41* that:

*“Court must in all cases award damages with the object of compensating the plaintiff for his or her loss. The court in tort while awarding damages in setting the sum of money to be given for reparation the court should as nearly as possible get that sum of money which will put the party who has been injured in the same position as he or she would have been in if he or she had not sustained the wrong for which he or she is now getting compensation.” (See **The Uganda Civil Justice Bench Book 1st Edition page 200- 207**).*

From the above Principles of the law, to award plaintiff Shs. 2,000,000/= for general damages is reasonable given the circumstances of the case. This is because plaintiff’s houses were demolished, the defendant undertook to repay Shs. 1,900,000/= with interest of 200,000/= which he never paid.

This figure translates to Shs 2,100,000/= which remained as proved but unpaid. The award of 2,000,000/= therefore was even lower than the actual proved amount of loss.

It was therefore a reasonable award. This court finds no merit in that ground of appeal.

In final analysis this appeal has failed on all grounds. It’s dismissed with costs.

Henry I. Kawesa

JUDGE

07.07.2017