

THE REPUBLIC OF UGANDA

COURT OF APPEAL

CIVIL APPEAL NO. 56 OF 2004

(OKELLO, ENGWAU AND KAVUMA, JJ.A)

(An appeal from the decision of the High Court (Ntabgoba, P. J. as he then was) sitting at, Kampala in High Court Civil Suit No. 937 on July 1, 2004)

SURESHCHANDRA A. GHELANI,,,,,,,,,,,,,,,,,,,,,,,,,,,,,APPELLANT

VERSES

CHANDRAKANT PATEL,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,RESPONDENT

Civil Procedure—Damages—Exemplary damages—Grant of exemplary damages— Requisites for granting exemplary damages

Civil Procedure—Restitutionary remedy/compound interest—Grant thereof—Function of restitutionary remedy—Function of restitutionary remedy is to restore to plaintiff value of thing, thing itself or its substitute which plaintiff had lost

This was an appeal against the decision of the High Court whereby judgment was given against the appellant for a refund of US\$ 25,000 with compound interest thereon at the bank rate of 20% per annum from the date he took the money till payment in full, to pay general, exemplary and aggravated damages of Ug. Shs 150,000,000/= with interest thereon at the rate of 20% per annum from the date of judgment until payment in full and to pay the cost of the suit.

The brief facts that gave rise to this appeal were that the respondent had claimed to have acquired the properties on Plots 5, William and 27, Nkrumah roads in Kampala, both by assignment and succession. He had sought and had been granted repossession of the properties. The plots are registered as Leasehold Register Volume 131 Folio 9 and Leasehold Register Volume 356 Folio 1 respectively.

In his application for repossession, the respondent relied on the following documents:- A title deed showing that he owned 40% of the shares in the suit properties by succession and 60% by assignments as follows:-

- (i) A deed of assignment by Shatishchandla Rambhai Patel (S.R.Patel) who owned 35% shares in the properties, showing that he assigned that interest to the respondent on October 12,1971;

- (ii) A deed of assignment by Ishwerbhai Charthobhai Patel (I.C. Patel) who owned 15% shares in the properties, showing that he assigned that interest to the respondent also on October 12, 1971, and;
- (iii) A deed of assignment by Manibhai Ashabhai (M.A. Amin) who owned 10% shares in the properties showing that he assigned that interest to the respondent on March 5, 1972.

On receipt of the respondent's application, the Minister responsible apparently declined/delayed to grant the repossession. This prompted the respondent, in accordance with the provision of the Expropriated Properties Act 1982 to appeal to the High Court. That suit was subsequently settled by consent judgment. A consent judgment was entered. Under the judgment, the respondent was granted the repossession of the said properties. There was no appeal against that grant in accordance with the Expropriated Properties Act.

The appellant claimed that he had a Power of Attorney from the executors of the estate of the late M.A. Amin, who had owned 10% shares in those properties. He, the appellant, demanded from the respondent US\$ 180,000 as the value of M.A. Amin's 10% shares interest in the two properties. When the respondent delayed to pay the money, the appellant reported the former to police alleging forgery. When he made this report, the appellant had known of the respondent's health problem. He had kidney problem. The police arrested and detained the respondent, thereby he was unable to receive any or proper medical treatment for his illness. He was released only after payment of US \$25,000 as part of the US \$ 180,000 with a promise to pay the balance after release.

The respondent fled to the UK to attend to his health problem. There he instructed his lawyers and the appellant was sued for recovery of US \$250,000 as money had and received, exemplary/aggravated and charges for arrest and detention, interest and costs of the suit. The appellant denied the claim and counter-claimed as an agent holding the Power of Attorney of the executors and beneficiaries of M.A. Amin's estate. The Court heard the suit and passed judgment against appellant, hence this appeal.

HELD:

1. Exemplary damages are awarded where the conduct of the defendant was high handed, insolent, vindictive or malicious, showing contempt of the plaintiffs right or disregarding every principle which actuates the conduct of a gentleman. In the instant case, the appellant had known the state of health of the respondent, but because of greed for money, he caused the arrest and detention of the respondent. At the police station, the respondent was harassed by a CID officer. The appellant himself admitted that

he caused the arrest and detention of the respondent to compel him to effect payment. It was only fair that exemplary damages be awarded.

2. The function of the restitutionary remedy is to restore to the plaintiff the value of the thing, the thing itself or its substitute which the plaintiff had lost. Where the defendant has obtained a benefit at the expense of the plaintiff, the law demands that this should be restored to the plaintiff. In the instant case, the appellant unjustly got from the respondent US\$ 25,000. He should not be allowed to benefit from this money. That would be 'unjust enrichment. He would be benefiting from his wrongdoing. The award of compound interest was appropriate.

Appeal dismissed with costs.

Dated this 30th day of August 2006

Okello,JA

Engwau JA

Kavuma,JA

Legislation considered;

Expropriated Properties Act of 1982, section 14(1)

Court of Appeal Rules Directions, 1996, rule 97 **Cases cited:**

Fibrosa Spolka Akeyjna Vs Forbrpom awspm Comb Barbour Ltd [1943] AC 32 at 61 Hailing Manzoor Vs Serwau Singh Baram, Supreme Court Civil Appeal No. 9 of 2001 MC Connell Vs Kimani [1967] EA 702 Stephen Kalinin Vs Stewart Kaur, Supreme Court Civil Appeal No. 22 of 1995 Westdeutsche Landdes Bank Girozentrale Vs Islington Borough Council [1996] 2 ALLER 961, [1996] 2 WLR 802

Other legal materials referred to:

Paget's Law of Banking, Eleventh Edition, Page 185

The Code of Civil Procedure 1908, Volume 1, Chitale & RAO

The Principles of Law of Restitution, by Srahem Virgo