

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL SUIT No. 0014 OF 2005**

KAKYOMYA'S FARM AND TEA ESTATE LTD.}} :::::::::::::::::::::::::::::::::::::::
PLAINTIFF

VERSUS

THE ATTORNEY GENERAL OF UGANDA }} :::::::::::::::::::::::::::::::::::::::
DEFENDANT

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

JUDGMENT

The Plaintiff, a body corporate, instituted this suit against the Attorney General of Uganda in the latter's representative capacity as the legal representative of the Government of Uganda – as provided for under Article 119 (4) of the Constitution of Uganda, and section 10 of the Government Proceedings Act (Cap 77) – seeking the following remedies from this Court:

- (a) Special damages for loss of cattle, income and property destroyed.
- (b) General damages for trespass.
- (c) Exemplary damages.
- (d) Interest on (a), (b), and (c) above.
- (e) Costs of the suit.

It's case was that from December 1997 through to April 2003 the Uganda Peoples Defence Forces wrongfully occupied its two livestock ranches situated at Masongora, Hakibale Sub County, Burahya County, Kabarole District, (comprised in LRV 3416 Folio 6 Plot 5 Block 9, size 372 hectares; LRV 1567 Folio 4 Plot 2 Block 9, size 79.9 hectares; and LRV 1550 Folio 22 Plot 1 Block 9, size 209.9 hectares); and as well, Nyaruzigati in Kyarusozzi Sub County, Mwenge County in Kyenjojo District (comprised in LRV 1618 Folio 16 Plot 1 Block 6, size 772 hectares; LRV 1551 Folio 11 size 83.2 hectares; and LRV 1529 Folio 2 Plot 3 Block 5, size 201.9

hectares); with the resultant loss of its livestock, and destruction of several of its properties at the said ranches.

The Defendant denied the Plaintiff's claims, contending that the Plaintiff's action was incompetent, bad in law and barred by law, frivolous, and vexatious, and did not disclose a cause of action against the Defendant; and further contended that the said acts leading to the loss complained of by the Plaintiff had been caused by the rebels of the Allied Democratic Forces. Accordingly, the Defendant contended, the Plaintiff was not entitled to any of the reliefs sought; and consequently, it urged the Court to dismiss the suit with costs.

However, in a scheduling memorandum the counsels for the Plaintiff and the Defendant mutually agreed upon the following facts; and the Court duly adopted them. These were that:

1. The Plaintiff owns two cattle ranches (farms) of both local and boran breeds; one at Masongoro in Kabarole District and another at Nyaruzigati in Kyenjojo District. The combined size of the two ranches is 1718.9 hectares.
2. These farms were both affected by rebel activities of the ADF rebels who attacked the areas of Hakibale and Kyarusenzi Sub-Counties both parts of the original Kabarole District.
3. Kabarole was later split into two to form Kyenjojo District and Kabarole District.
4. Hakibale Sub-County where Masongoro Farm is found is in present day Kabarole District; while Kyarusenzi Sub-County where Nyaruzigati Farm is found is in present day Kyenjojo District.
5. The UPDF entered upon and occupied these ranches between December, 1997 and April, 2003 to counter ADF insurgency (in order to fight the ADF rebels).
6. During the period of occupation, activities in both farms stalled, the Plaintiff's workers abandoned the farms, there was no treatment of and dipping of cattle and some cattle died of tick fever diseases as a result.
7. Some of the cattle died due to the neglect, some were killed and eaten by the ADF rebels and UPDF soldiers.
8. Several farm structures, houses, farm implements and equipment were vandalized, damaged and or destroyed, including cattle deeps, cemented water wells, perimeter fences around the farms and servants' quarters.

9. Some of the cows were stolen by thieves who took advantage of the war situation because the Plaintiff's workers had been scared away from the farms as they were advised by the UPDF to vacate the farms.
10. The Plaintiff's workers could not co-exist with the UPDF as this was dangerous for their safety because of the war between the ADF and UPDF soldiers. Three of the workers had been killed by the ADF rebels.
11. The Plaintiff was not compensated by the Government for the occupation of his farms or for the consumption/destruction of his cattle by UPDF soldiers.
12. The UPDF dug trenches and put several shanty structures on the farms. The farms also served as training grounds for LDU and SPCS.
13. The Plaintiff wrote to the RDC of Kabarole District on 14th February, 1998; and the RDC acknowledged receipt of this letter in his of 6th April, 1998.
14. The UPDF were in the ordinary course of their duties.
15. The UPDF Special Investigation Branch investigated and made a report under Ref: UPDF/MI/SIB/A52 dated 15th March, 2004, in which the occupation and non compensation were admitted.

In contention however were the number of animals involved, the monetary value of the loss, and the proportion that should be apportioned to the UPDF soldiers; taking into account the activities of all the players who could have been involved during this period in issue, namely: any sales by the Plaintiff, consumption by the ADF rebels, and also the local thieves. It was therefore necessary to establish all this so as to enable Court share out liability for the loss suffered by the Plaintiff between all the players named. Accordingly then, the issues framed were as follows:

- (i). What is the measure of damage caused on the two farms of the Plaintiff in the relevant period and situation for which the UPDF and therefore the Defendant is liable; in view of the presence or participation of other players including ADF rebels, common thieves, and the Plaintiff's own sales if any?
- (ii). What reliefs are available in the circumstances?

After this, the parties made an attempt at an out of Court settlement. This however came to nothing; as the gap between the sums of U. shs. 2.4 billion/= demanded by the Plaintiff, and the offer of U. shs. 198,250,000/= made by the Defendant, which the Plaintiff found most unsatisfactory, was starkly and irreconcilably too wide. The matter was therefore set down for

hearing; and this was really for the purpose of determining the quantum of loss attributable to the activities of the UPDF whose occupation was not denied; hence the liability of the Defendant. This was in keeping with the provision of section 57 of the Evidence Act (Cap 6); which state that:

“No fact need be proved in any proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.”

With regard to issue No. 1, Erisa Kakyomya (PW1) testified that the Plaintiff is a family company engaged mainly in the business of ranching; and that its two suit ranches had been stocked with cattle of various breeds including borans and other crosses. There were also goats and sheep in the Nyaruzogati ranch. In addition was a perimeter fence, a modern dip, administration block, residential houses for the Director and Manager, and 28 stations in various locations with a road infrastructure connecting them; and as well tools and equipment. The witness also had a family house on the ranch.

He testified that it was in July 1997 that the UPDF occupied Masongora ranch; and in December 1997 it entered onto and occupied the Nyaruzogati ranch following a shooting incident thereat which had resulted in the killing of three workmen. At the time there were 1,665 head of cattle in that ranch with about 7 calves which had not been included in that number. There was an attack on the Masongora ranch as well in which one of their workers was killed; and as a result, the UPDF ordered everyone to vacate that ranch too; leaving the entire livestock behind.

In his letter dated 14th February 1998, (**exhibit PE1**), to the Resident District Commissioner, Kabarole, and copied to a number of government and political officials, PW1 as Managing Director of the Plaintiff stated that the two ranches had been abandoned and that:

“There has been no treatment of and dipping and the whole place remained a battlefield hence scaring all workers and ourselves since October 1997, to date. We have been in touch with the Administrators and Security Officials but attacks by ADF has continued in these areas. Eventually we have been advised by UPDF to keep away from these areas until the situation normalises. Because of the prevailing situation a big number of our herds has died of

tick fever diseases, due to non dipping and lack of treatment. In addition, thieves are taking advantage of the situation by taking the animals alive, killing and drying meat in the ranches for sale. It is very difficult to state the effect of the ADF rebels on the two ranches but we can only give the records of the livestock on the ranches before the problems started as follows:”

The RDC Kabarole did respond in April of the same year and indicated that the situation had improved and urged PW1 to make arrangements with the authorities for security arrangements with a view to normalise the situation. PW1 took possession and made head count, and in his letter dated 17th November 1998, (**exh PE6**), in reply to the one of the Resident District Commissioner, he stated that the cattle stock at Nyaruzigati ranch, which had hitherto been 1665 head, now stood at a mere 451; and the one of Masongora ranch was reduced from 2085 head to only 590. In the letter he was specific as follows:

“I would like to report to you that the cause of the huge losses in numbers was mainly due to the followings:

- 1. None attendance or treatment since October, 1997 to around the end of September 1998 and attributing to about 70% of the total loss.*
- 2. Rebels and other related activities to about 10%.*
- 3. Theft by local thieves to about 20%.*

All these are estimated figures.”

PW1 testified that they eventually obtained vacant possession of the ranches in 2003 when the army had left; and when they did so, they were able to establish that the infrastructure thereat had been vandalised, as the uniports, iron sheets of the houses, doors, and windows, had been removed. Trenches had also been dug on the ranches. Of the cattle population, only 120 remained in Nyaruzogati, and 40 in Masongora. He complained to the UPDF and other government authorities; and instructed his lawyers to serve a notice of intended suit on the Defendant; which was done.

His further testimony was that pursuant to this notice of intended suit, the UPDF duly carried out an investigation in the matter, and a report was made; a copy of which was later handed over to him. This report (see **exh PE3**) was made and signed by the Director Special Investigation Branch Uganda Peoples Defence Forces; one Capt. Godfrey Tumusime Katsigazi. The relevant part of this report states as follows:

“NOTICE OF INTENTION TO SUE GOV’T BY MS. KAKYOMYA FARM AND TEA ESTATE LTD.

1. *Brief facts leading to the cause of action are that:-*

- a. *In Dec 97 UPDF occupied the two farms to wit: **Nyamzigati** and **Masongora** being the property of the intending plaintiff.*
- b. *That during the period of occupation activities in both farms stalled and a number of cattle were allegedly killed and eaten by UPDF.*
- c. *That several farm structures, houses were damaged including farm implements and equipments.*

2. *Pursuant to ref ‘A’ and ‘B’ investigations were commenced as per ‘C’ above and findings are as follows:*

- a. *The two ranches were occupied by the UPDF soldiers between Dec 97 and Apr 03 to counter ADF insurgency.*
- b. *The intending plaintiff’s servants were advised by the Army to vacate the farm after three (03) of them had been killed by the ADF rebels.*
- c. *According to Mr Kaija Patrick Farm manager of Nyaruzigati 1,672 cattle both local and boran were on the farm. After UPDF occupation the number scaled down to 120, however he is not sure whether it was ADF or UPDF responsible for the loss.*
- d. *The farm manager of Masongora Mr Karamagi Lawrence contends that initially the farm had 1,420 cattle but reduced to 120 after the UPDF occupied and pulled out of the place. He could not ascertain whether the animals were eaten by ADF or UPDF.*
- e. *However our investigations were not availed farm records which the claimant claimed were destroyed during the farm occupation by the UPDF. Hence it is difficult to ascertain the number of cows, authoritatively.*
- f. *The District veterinary officer however avers that some animals (cattle) died due to negligence.*
- g. *Farm property were damaged that include cattle dips, cemented water wells, perimeter fence around the farm removed; servants’ quarters were vandalised among others.*

3. **OBSERVATIONS**

- a. *Authority to deploy UPDF soldiers in Kakyomya's farms was by the then Army Ciommander and thus evidence of occupation.*
- b. *The digging of trenches is part of the activities of the UPDF as are evidenced by the photos attached.*
- c. *The farms also served as training grounds for LDUs and SPCs.*
- d. *The animals lost cannot solely be attributed to UPDF. ADF could have eaten some and others could have died due to to negligence.*

4. **SUGGESTIONS**

- a. *Although the UPDF soldiers occupied the intending plaintiff's farm in a War –like situations it does not waive its liability for compensation.*
- b. *UPDF could dispatch a team to inspect the farm to ascertain that it is free from explosive or any military ware that can pose a danger to the plaintiff who is seeking permission to occupy the whole farm.*
- c. *The intending plaintiff's claim is genuine to the extent of occupation of the farms, but the value as claimed can best be verified by a Government valuer.”*

Following this, the Defendant expressed willingness to settle the matter by compensating the Plaintiff. The witness then commissioned a professional to indicative the prices for the various categories of cattle as at 6th May 2003, and this was supplied by the District Veterinary Officer, the late Dr. Kairumba; see exhibit **exh PE7**. The Plaintiff also commissioned a professional valuer to determine the total loss and destruction suffered at the ranches; and a report was made by PW2 on the 20th May 2003 in which he assessed the total loss at U. shs. 2,471,867,840/=; (see exhibit **PE8**).

When cross examined by State counsel, PW1 reiterated what he had stated in **exh PE6**; namely that the biggest loss of its cattle occurred in the period from October 1997 to October 1998 when the Plaintiff was unable to attend to them because the security situation was tense due to the insecurity caused by the ADF insurgents; and as a consequence of which all the employees of the Plaintiff, together with the other people of the surrounding area, were all ordered by the UPDF to leave the area; and were prohibited from returning to the ranch, with the clear warning that anyone not heeding this order would be subjected to the treatment the insurgents deserved.

He explained further that he had placed reliance on the account the UPDF had given to him that the bulk of the cattle (70%) had perished owing to non treatment; and accordingly so was his apportionment in **exh PE6** of responsibility for the loss the Plaintiff had suffered. He stressed that

the UPDF had, prior to their occupation of the ranches, limited their activities to merely patrolling the area; and while this was so, business had gone on normally in the ranches without any big losses suffered. His contention was therefore that had the UPDF not occupied the ranches, whatever loss that the Plaintiff might have suffered would not have been to the magnitude registered subsequent to their occupation.

Since it was the UPDF's allegation to PW1 that the loss the Plaintiff had suffered was at the hands of a number of factors – disease, UPDF, ADF, and common thieves – one would have expected the Defendant to adduce evidence to that effect. Unfortunately the Defendant did not adduce any such evidence, or that the Plaintiff sold off any of the animals. It is not in dispute that the Plaintiff's loss occurred at a time when the UPDF were in effective possession of the ranches. The UPDF had the Constitutional obligation to ensure that the Plaintiff's employees and properties were accorded proper protection. In evacuating the ranches of the Plaintiff's employees, it had done the right thing.

Such property of the Plaintiff, as was not taken along from the ranches at the time of evacuation, remained there under the sole responsibility of the UPDF. In any case if indeed the animals that were under their protection were dying in such numbers as alleged, the reasonable thing would have been for the UPDF to inform the Plaintiff for appropriate measures, such as massive sale, to be taken to ameliorate the loss. The allegation by the UPDF that the greater loss of livestock was attributable to disease, from non-treatment, should be received with a pinch of salt.

There is good reason to conclude that the UPDF, which had effectively occupied the ranches and converted them into training grounds for several categories of defence units, converted the Plaintiff's animals into quite handy source of food and ration. It is not far-fetched either, to infer that the UPDF had a hand in the sale of the animals by the so called local thieves. Otherwise how could common thieves operate in a no go area such as the ranches were, and dispose of their loot in the nearby markets; all with such apparent abandon as testified to by PW1? Either the UPDF was in full cahoots with them, or it was grossly negligent in its mandate to protect these animals.

I would therefore reverse the order of apportionment of liability for the loss suffered by the Plaintiff in the period between the months of October 1997, to September 1998, and hold the UPDF 80% responsible for that loss. I would however give allowance for possible common thievery beyond whatever control the UPDF might have been able to exert, and apportion 10% to

this. The remaining 10% of the loss I would apportion to the ADF which, as a guerrilla force, was mobile and could therefore not be expected to have much time to burden itself with such bulk commodity.

However, in view of the massive loss suffered by the Plaintiff the first time it's employees were ordered out of the ranches, the Plaintiff ought to have learnt from this quite painful and all too recent experience; and taken steps to minimise its losses when the UPDF ordered its employees out of the ranches the second time. It was clearly irresponsible of the Plaintiff to have stood by – for as long as four years, i.e. from 1998 to 2003 – as it inexplicably did, witnessing its livestock being depleted; and merely content with complaining to the authorities. That was rather strange.

The sensible thing the Plaintiff would have done upon or during the second order of evacuation of its employees by the UPDF was to dispose of the entire remaining stock, and then wait to restock the ranches afresh when the situation finally normalised. I would therefore, on account of this, apportion to the UPDF only 60% responsibility for the loss suffered during this second period of evacuation. I still hold the UPDF responsible in the main, for the very same reasons I have given for their liability with regard to the loss the Plaintiff suffered during the first period of evacuation.

On the second issue – namely, the remedies available to the Plaintiff – I have to first determine the monetary value of the loss suffered by the Plaintiff; and apportion the same according to the liability I have arrived at above. Then I have to determine whether as pleaded by the Plaintiff it is entitled to any other remedy. There are two valuation reports (**exhibits PE8 and DE2**) on the matter. Since the two reports make different returns on the matter, I have to determine which of the two reports enjoys greater credibility, and more convincingly reflects that loss.

Dr Ochwo Ochieng Ojamoko (PW2), a consulting valuation surveyor, who carried out valuation work at the two ranches in 2003, explained in his testimony how he had arrived at the losses he valued in the sum of U. shs 2,471,867, 840/= as indicated in **exhibit PE8**. He stated that he had not been informed by any financial record with regard to the expected income from the cattle in the two ranches; hence his had merely been made an estimate which in his opinion was at least 95% correct.

Against PW2’s valuation was that of William Obbo Kibenge–DW1; who had been instructed by the Defendant to independently assess the percentage (degree) and realistic value of the damage done to Masongora ranch. His inspection report was **exhibit DE2**. He conceded during cross examination by counsel for the Plaintiff, that in carrying out his valuation, he had not obtained the necessary background information to enable him appreciate the nature and extent of the damage to the subject matter. When confronted with **exh PE3**, he conceded that the evidence of destruction contained therein would form the basis for the return of the valuation of the loss suffered by the Plaintiff.

In the light of the independent investigations by the UPDF whose report I have produced above in extenso, I am rather uneasy about the manner DW1 went about doing his work and the findings that resulted therefrom. His report was rather limited both in the location covered and the nature of the damage alleged to have been established. This might have been determined by the instruction he had been given by the government. Be it as it may, the right person he ought to have approached to lead him to the ranches was the Plaintiff. He clearly did not do so.

In the event, he did not visit one of the ranches in respect of which the Plaintiff also complains of destruction; and even for the ranch he purportedly visited, he asserts there were no destructions despite the contrary finding by the UPDF’s independent investigation which corroborated the Plaintiff’s complaint in that regard. For this reason then, I am inclined to be guided by the two reports that largely agree. With regard to the value of the infrastructure destroyed, I take the findings of PW1 as contained in his report (**exhibit PE8**) as follows:

1. INFRASTRUCTURE

- (i) Perimeter fence in Nyaruzigati ranch 246,974,000/=
- (ii) Perimeter fence Masongoro ranch 134,734,000/=
- (iii) Houses and buildings in Nyaruzigati ranch 70,000,000/=
- (iv) Dip tanks and spray races in Nyaruzigati ranch 28,000,000/=
- (v) Dip tanks and spray races in Masongoro ranch 12,000,000/=
- Total value of infrastructure destroyed 491,708,000/=

2. LIVESTOCK

- (i) From Nyaruzigati ranch 553,200,000/=

(ii) From Masongoro ranch 143,490,000/=

Total value of animals lost 696,690,000/=

However from this total of 696, 690,000/=, arrived at by the valuer, I deduct 25%; which is 174172500/=. This fairly represents the other contributory factors to the Plaintiff's loss – other than the UPDF – inclusive of the Plaintiff's own contributory blame in the period of the second evacuation. I have rounded this to 25% because the number of animals that had remained after the first evacuation was relatively quite small as compared to what was lost during the first period of evacuation; for which I have held the Defendant largely responsible. Accordingly then, the Defendant is liable for loss of animals to the total value of shs. 522,517,500/=.

The loss from animals and infrastructure destruction suffered by the Plaintiff totals to shs 1,014,225,500/=. I also accept, and add thereto disturbance allowance of 30% of that total; which is shs. 304,267,650/=. PW1 testified that apart from the sale of the animals, the ranches yielded money from sale of milk; with Nyaruzogati ranch yielding between 200 to 400 litres of milk daily, and Masongoro ranch yielding between 100 to 200 litres of milk daily. The witness stated that the loss traumatised his family who are the owners of the Plaintiff; and that the loss as assessed in 2003 does not now represent a just compensation in the year 2008 when the suit was heard.

However, I find the sum of 1.2billion/= the Plaintiff has prayed for as additional to what PW2 had assessed in 2003 unjustifiable. It would be wrong to compute the Plaintiff's loss of income to cover the period between 1997 and 2003, which was a period of insecurity, and hold the Defendant liable for it. In the absence of evidence to the contrary, I take 2003, when the UPDF vacated the ranches, to be the year the situation normalised; and had its livestock not been depleted and infrastructure destroyed, the Plaintiff would have resumed business. Hence, I find it appropriate to compute the loss of income for the 7 years running from 2003 to the date of this judgment.

I am not persuaded to apply PW2's computation of 12% per annum for income that would have accrued to the Plaintiff from the sale of cattle and cattle products from the two ranches for the period of occupation; which came to 926,950,440/=. This, as I have pointed out, was a period of insecurity. However, I take into account the fact that livestock in the two ranches would naturally have multiplied, and the yields from their products increased between 2003, when it took

possession of the ranches, and the date of this judgment. For this period instead, and taking care of all the imponderables, I consider a sum of shs 650,000,000/= reasonable to reflect the income that would have accrued therefrom.

Owing to the fact that the UPDF's entry into and occupation of the ranches were a necessity dictated by the security situation that obtained then, and was by itself not wrong, I find the plea for exemplary damages unjustified and decline to award it. The UPDF's was not guilty of wrongful entry or occupation, but rather breach of duty to protect the Plaintiff's properties; and for this, an award of appropriate compensatory and general damages taking cognisance of the Plaintiff's woes would adequately atone for the loss it has suffered. I find that the sum of shs 100,000,000/= suffices as general damages.

In all then, I allow the Plaintiff's suit, and order the Defendant to pay the Plaintiff as follows:

- (i) Compensation for the destruction or loss suffered:
 - (a) Infrastructure 491,708,000/=
 - (b) Livestock 522,517,500/=
 - (c) Disturbance allowance 304,267,650/=
 - (d) Income from livestock & their products –
(2003–2010) 650,000,000/=
- (ii) General damages 100,000,000/=
- (iii) Costs of the suit.
- (iv) The award in (i) (ii) and (iii) herein shall attract interest at 10% per annum from the date of this judgment till payment.



Alfonse Chigamoy Owiny – Dollo

JUDGE

23 – 04 – 2010