

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-00-CV-CS-O194-2004**

- 1. COWE (U)**
- 2. COWE LTD :::PLAINTIFFS**

VERSUS

ATTORNEY GENERAL :::DEFENDANT

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

The 1st plaintiff was a Non-Governmental Organization, registered under the laws of Uganda vide Certificate No.5914/3628 [EXH P1], mandated to operate in Mubende, Wakiso and Kampala Districts for a period of 12 months and the second plaintiff is a company limited by guarantee, which was incorporated on the 3rd January, 2002.

By notice dated 4th April, 2002 [EXH P3], the Non Governmental Organization Board (NGO Board) revoked the 1st plaintiff's registration Certificate on grounds of public interest; the plaintiff appealed to the Minister of Internal Affairs against the decision of the NGO Board, and by letter dated 13th May, 2002 [EXH P6], the Minister communicated that he had upheld the decision of the NGO Board. The 1st plaintiff appealed against the decision of the Minister to the High Court and the court ordered that the NGO Board re-instates the registration of the 1st plaintiff as a Non Governmental Organization because it had not been given an opportunity to be heard before the cancellation of the registration.

The plaintiff subsequently brought this suit against the defendant for general damages, special damages and exemplary damages for negligence which occasioned the unlawful revocation of the 1st plaintiff's Certificate of Registration, interest and costs of the suit.

The defendant on the other hand contended in the written statement of defence that the alleged loss and damages, if any, suffered by the plaintiff owing to the revocation of its Certificate of registration are speculative, fabricated, and too remote. The defendant denied liability thereof.

At the scheduling conference, the following were the agreed facts;

1. The 1st plaintiff was a non-governmental organization legally registered under the laws of Uganda vide Certificate No.5914/3628.
2. The 2nd plaintiff is a company limited by guarantee, duly incorporated under the laws of Uganda on 3rd January, 2002.
3. The 1st plaintiff was mandated to operate in Mubende, Wakiso and Kampala for a period of 12 months.
4. By notice dated 4th April, 2002, the NGO Board revoked the plaintiff's registration as an NGO, on grounds of public interest.
5. The 1st plaintiff appealed to the Minister of Internal Affairs but the Minister upheld the decision of the NGO Board.
6. The 1st plaintiff further appealed against the decision of the Minister.

The following were the agreed issues set down for resolution.

1. Whether the plaintiffs have any cause of action against the defendant.
2. Whether the suit is barred by law.
3. Whether the plaintiffs are entitled to the damages prayed for.
4. Remedies available to the parties.

Although the above issues were agreed upon for resolution, I find that in order to have this matter properly disposed of; I shall rephrase and re-arrange the issues in the following order;

1. Whether the suit is barred by law.
2. Whether the plaintiffs have a cause of action against the defendant.
3. Whether the defendant was negligent in the execution of its duties.
4. What remedies are available to the parties.

In his submissions, Counsel for the plaintiff raised a preliminary point of law that the defendant's written statement of defence does not disclose a reasonable answer or defence and therefore, it is frivolous and vexatious and ought to be struck off the record.

Counsel relied on Order 15 rule 1(6) of the Civil Procedure Rules, where it is provided that nothing in the rule requires the court to frame and record issues where the defendant at the hearing of the suit makes no defence, or where issue has been joined upon the pleadings. Counsel contended that the most crucial point is that the matter in issue must have been a material

proposition of fact or law affirmed by one party and denied by the other. He relied on ***Standard Chartered Bank (U) Ltd Versus Mwesigye Geofrey, HCMA No.477 of 2012***, where it was held that;

“Material propositions are further defined as propositions of law or fact which the plaintiff must allege in order to constitute a defence... The apparent exception to the framing of issues from the pleadings of both parties, is the determination of whether a plaint disclosed a cause of action or a reasonable cause of action in terms of Order 7 Rule 11 CPR and whether a defence discloses a reasonable answer or defence or whether it is frivolous or vexatious or an abuse of court process under Order 6 Rule 30 CPR. In such cases the pleadings sought to be struck out or dismissed will be examined without reference to the pleadings of the opposite side.”

Counsel contended that the issues framed out of the material propositions of fact and law denied by the defendant was already determined and concluded; considering such issues again is frivolous and vexatious, and an abuse of court process.

From the reading of the defendant’s amended written statement of defence, propositions of fact are raised which are reasonable answers to the propositions alleged by the plaintiffs. Paragraph 8 of the amended statement of defence reads as follows;

“In further reply to paragraphs 5 and 11 of the plaint, the Defendant denies that it is liable as alleged or at all and maintains that the alleged loss and damage, if any suffered by the plaintiff, are speculative, fabricated and too remote as a consequence of the revocation of the Certificate of Registration of COWE as an NGO, and or the actions/omissions of the NGO board and the Minister of Internal Affairs.”

I find that the above contention is a reasonable answer as well as a defence put across by the defendant.

I therefore do not find merit in this preliminary objection raised by counsel for the plaintiff.

Determination of issues.

ISSUE 1

Whether the suit is barred by law.

At the hearing, Counsel for the defendant raised a preliminary point of law, that the suit was time barred. This court made a ruling that the suit was not time barred but reserved the reasons for the ruling to be detailed in the judgment.

It was the submission of Counsel for the defendant that while this suit was filed on 16th March, 2004, it should have been filed by 4th April, 2004; therefore, it was time barred by the provisions of the Civil Procedure and Limitation (Miscellaneous Provisions) Act. Counsel contended that time began to run on 4th April, 2002, which was the date of revocation of the registration.

In reply, Counsel for the plaintiff submitted that the 1st plaintiff was under incapacity until it was re-instated by order of court dated 13th October, 2002, and until then, it could not be determined whether the revocation was proper or improper. Further, that the 1st plaintiff was under a disability to bring the suit, and even after the order of court for reinstatement, the Minister of Internal Affairs appealed against the order and it was on 1st November, 2002, when the plaintiff was able to bring the action.

It is not in contention that the 1st plaintiff's Certificate of Registration was revoked on 4th April, 2002, as per the notification of revocation [EXH P3]; and that the plaintiff filed this suit in negligence on 16th March, 2004.

Section 3(1) of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap 72, provides that no action founded on tort shall be brought against the Government after the expiration of two years from the date on which the cause of action arose.

I have perused the record and I find that this suit was indeed filed on 16th March, 2004. This was less than two years from the time when the notice of revocation dated 4th April, 2002, was issued by the NGO Board. Therefore, this suit was filed within the stipulated two years period under the provisions of the Civil Procedure and Limitation (Miscellaneous Provisions) Act.

In addition to the above, Section 5 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap 72, provides that if on the date when any right of action accrued for which a period of limitation is prescribed, the person to whom it accrued was under disability, the action may be brought at any time before the expiration of twelve months from the date when the

person ceased to be under disability. In the present case, the 1st plaintiff's certificate of registration was revoked on 4th April, 2002, and from that date, the plaintiff had no capacity to bring this action. It was not until by order of court dated 14th October, 2002, re-instating it that it was in the position to lodge this suit. I find that the plaintiff was under incapacity until the 14th October, 2002.

Accordingly, I find that this suit is not barred by law.

ISSUE 2.

Whether the plaintiffs have a cause of action against the defendant.

Counsel for the plaintiffs submitted that the plaintiffs have a reasonable cause of action which satisfies the conditions precedent under Order 7 rule 11 of the Civil Procedure Rules. He relied on *AG Versus Major General Tinyefuza, Constitutional Petition No.1/1997*, where a cause of action was defined as a bundle of facts which if taken together with the law applicable to them give the plaintiff a right to a relief against the defendant; and in *Tororo Cement Versus Frokina International Ltd, SCCA No.2 of 2001*, a cause of action was defined as every fact which is material to be proved to enable the plaintiff to succeed or every fact which if denied, the plaintiff must prove in order to obtain judgment. It was Counsel's submission that from the pleadings and evidence adduced by the plaintiff's witnesses, the plaintiff was a registered company limited by guarantee and a non-governmental organization; it had a legal right to operate throughout the country, which right was violated by the defendant's servants when they closed its offices without a fair hearing.

In *Tororo Cement Co Ltd Versus Frokina International Ltd, SCCA No.21 of 2001*, which was cited in *Steven Ssemakula Versus Samuel Serunjogi, Civil Suit No.187 of 2012*, the three essential elements of a cause of action were stated to be;

1. The plaintiff enjoyed a right,
2. The right has been violated,
3. The defendant is liable.

In the present case, the plaintiffs pleaded that at all material time, the plaintiff was a registered non-governmental organization, offering charitable services to the community and a copy of the Registration Certificate was attached to the plaint as Annexure "A". It is my view that by virtue of this registration, the plaintiff had and enjoyed the right to carry out the charitable activities/services in accordance with its mandate.

Further, it was the plaintiff's case in its pleadings, that the NGO Board, without according the plaintiff a right to be heard, unlawfully revoked the plaintiff's Certificate of registration and ordered the plaintiff to stop all its operations. I find that by the plaintiff's Certificate being revoked without according the plaintiff a right to be heard, its right to carryout activities in the communities was violated. Apparently, the right was violated by the NGO Board and therefore the defendant is liable.

It is my finding that there were triable issues that gave the plaintiff a right to relief against the defendant. Therefore, the plaintiffs have a cause of action against the defendant.

ISSUE 3:

Whether the defendant was negligent in the execution of its duties.

The plaintiffs led the evidence of two witnesses to prove that the NGO Board was negligent in the revocation of the 1st plaintiff's Certificate of registration and the closure of its offices which resulted into loss/damage.

PW1; Balikoowa Nixon, who is a Director and voluntary member of the plaintiffs, testified that while the plaintiffs were undertaking their lawful activities, the NGO Board, without according necessary audience to the 1st plaintiff, and without regard to the principles of natural justice revoked its certificate of registration. The plaintiff then appealed to the Ministry of Internal affairs against the revocation, but the Minister upheld the decision of the Board. Thereupon, five persons filled an application in the High Court challenging the decision arrived at by the NGO Board and the Minister of Internal Affairs; the Court made a ruling [EXH P7] and an order was made that the 1st plaintiff should be re-instated as a non-governmental organization since it was never given an opportunity to be heard by the Board before the cancellation of the registration. It was PW1's further testimony that the actions of the Government servants were unlawful, abrupt,

and inconveniencing to the plaintiffs and its members, when a decision was taken by the Board without taking all necessary measures to investigate in order to come to a logical conclusion.

DW2; Ssewaya Kagimu, who is also a Director and voluntary member of the plaintiffs, testified and maintained the evidence as given by DW1.

On the other hand, Counsel for the defendant submitted that while the plaintiff's had made statements that the Government of Uganda and the NGO Board acted negligently in unlawfully revoking the 1st plaintiff's Certificate of Registration, they had to prove facts pointing to the duty of care which the Government and the NGO Board had failed to take in supervising and overseeing the execution of their mandate.

It was the contention of Counsel for the defendant that the plaintiff's had failed to show that the NGO Board failed to exercise impartiality in its duty of care in protecting Ugandans from unscrupulous and dubious organizations. Further, that the 1st plaintiff over stepped the mandate bestowed on it by the Certificate of Registration by operating in other districts other than Mubende, Wakiso and Kampala, which resulted in its closure.

Counsel submitted that there is no bundle of facts in the plaintiff's case , which if taken together with the law applicable, pointed to an act of negligence by the defendant.

In *H.Kateralwire Versus Paul Lwanga (1989) HCB 56*, three ingredients making up a case of negligence were stated to be as follows;

- a. There must exist a duty of care owed by the defendant to the plaintiff;
- b. The defendant ought to have failed to exercise that duty of care; and
- c. Such failure must have resulted into injuries, loss or damage to the plaintiff.

By virtue of its supervisory obligations, the NGO Board owes a duty to the public, in ensuring that they are protected from errant and dubious organizations that might defraud or cause any kind of loss and damage to the public. Also, under Section 8(b) of the Non-Governmental Organization Registration Act, Cap 113, the Board has power to revoke a certificate of registration. It is against this mandate and power that the NGO Board revoked the 1st plaintiff's Certificate of Registration and stopped all its operations.

However, I have considered the above submissions, and I find that the NGO Board also owes a duty of care to the organizations. Section 7(c) of the Non-Governmental Organizations Registration (Amendment) Act, 2006, states that the Board has the function of guiding and monitoring organizations in carrying out their services. I find that this function imposes a duty of care upon the Board.

It is not in contention that the decision of the NGO Board to revoke the 1st plaintiff's Certificate of Registration was overturned by the High Court and an order for its re-instatement was made, basing on the fact that the plaintiff was not accorded an opportunity to be heard before the registration was cancelled. I agree with the submission of Counsel for the defendant that the NGO Board was exercising its duty in protecting the public when it revoked the plaintiff's certificate of registration and stopped all its operations. However, the NGO Board also owed a duty to the 1st plaintiff in ensuring that it followed due process before such revocation in order to ensure fairness and control over any possible damage/loss that would most likely follow the revocation. When the NGO Board denied the 1st plaintiff its constitutional right to be heard before reaching the decision to revoke the Certificate of Registration, in my view, it breached the duty of care. The right to be heard is a fundamental procedure that any administrative body or tribunal is expected to observe and uphold; it embraces a whole notion of fair procedure and due process, and any decision reached in breach of this rule is void. (*See Kyamanywa Versus IGG, HCMA No.143/2008*).

I have considered the facts leading to and surrounding the revocation of the certificate of registration; I find that those were the facts upon which the Board should have investigated and later given the plaintiff an opportunity to fairly respond to them before revoking their Certificate. I, therefore, find that the NGO Board breached its duty of care to the plaintiff by failing to follow the proper procedures before revoking the certificate of registration, which eventually resulted into loss and damages.

ISSUE 4.

What remedies are available to the parties.

The plaintiff claimed for special damages, general damages, exemplary damages owing to the negligent acts of the defendant.

Special damages;

The law is that special damages must be pleaded and proved. (*See Kyambadde Versus Mpigi District ADM [1983] HCB 44*).

The plaintiffs claimed for special damages in the plaint as follows;

- a) Rent of Kampala office at a rate of UGX 350/= per month for a period of 7 months
===2,450,000/=
- b) Mayuge District Head office at a rate of UGX 50,000/= per month ===300,000/=
- c) Busabala office at a rate of UGX 500,000/= per month ==990,000/=.
- d) Arua Head office at a rate of UGX 500,000/= per month === 4,500,000/=
- e) Hoima Head Office at a rate of UGX 200,000/= per month ===1,400,000/=
- f) Kawempe Mbogo site office at a rate of UGX 400,000/= per month === UGX
5,680,000/=
- g) Bombo Offices at a rate of UGX 150,000/= per month for 8 months.
- h) Kiboga District office ===== 5,000,000/=
- i) Lugazi offices at a rate of UGX 200,000/= per month for 9 months ===1,800,000/=
- j) Motor vehicle repairs by Kyaterekera metal works === UGX 440,000/=
- k) Motor Vehicle repairs by Uringa General Hard ware === UGX 175,000/=
- l) Fuel expenses for 7 months ===== UGX 4,586,000/=
- m) 1,000,000= Moringa seeds at a rate of UGX 20/= per seed ===UGX 20,000,000/=
- n) Expenses on security guards =====UGX 15,960,000/=

The plaintiffs led the evidence of PW1 and PW2, to prove the above claims.

It was the evidence of PW1 that the 1st plaintiff, through its areas of operation used to rent premises. Upon the closure of its offices, the plaintiff failed to pay rent and the landlords closed up the premises. Further, the premises countrywide used to be guarded by hired security companies which were being paid even after the un timely closure of its offices from April to November, 2002.

1. Claims for rent;

From the 1st plaintiff's Certificate of Registration [EXH P1], it was supposed to operate in the districts of Mubende, Wakiso and Kampala districts. Accordingly, I shall only consider the claim

for rent in as far as the above three districts are concerned only. The above notwithstanding, the claim for rent that the plaintiffs could have been able to pay had it not been for the defendant's closure of its offices cannot be classified as special damages.

I consequently disallow the claim for rent.

2. Motor vehicle repairs;

The plaintiff relied on two receipts exhibited in evidence as Exhibit P10, dated 11th June, 2002 and 12th June, 2002 respectively, to prove this claim. However, no attempt was made whatsoever to explain how the loss or damage to the motor vehicle was as a consequence of the defendant's negligence.

I therefore disallow this claim for expenses in motor vehicle repairs.

3. Fuel expenses

It was the evidence of PW1 that the plaintiffs lost a lot of income owing to the follow up the plaintiffs had to make; in terms of transport and fuel. Exhibit P11 was tendered in court as receipts for the fuel payments made by the plaintiff. The defendant did not contest this claim. I shall therefore award the plaintiffs UGX 4,586,000/= as prayed for.

4. Moringa seeds

Exhibit P12; which is the receipt dated 3rd January, 2002, was tendered in evidence showing that the plaintiff had purchased 1,000,000 Moringa seeds at a cost of UGX 20,000,000/=. I am not satisfied that the seeds worth UGX 20,000,000/= were purchased and went to waste because of the defendant's actions. There was need for more than just a receipt and the words of the plaintiffs. The plaintiffs could have done something to avoid this loss. Seedlings do not spoil overnight and there is no evidence that they had been moved from the sellers to any other place. This claim therefore fails.

5. Security guards.

It was the plaintiff's case that its premises country wide used to be guarded by hired security companies which were being paid even after the untimely closure of its offices country wide

from April to November, 2002. Receipts evidencing payments to the security company were tendered in evidence as EXH P12. As stated above, the 1st plaintiff's Certificate of Registration [EXH P1], indicates that it was supposed to operate in the districts of Mubende, Wakiso and Kampala districts, not country wide. I shall therefore award special damages for security services for only the 3 districts. In the circumstances of this case it is quite impossible to separate the security payments made in respect of the districts of Kampala, Mubende and Wakiso separate from the payments made as a whole in respect of the different districts in the country. I shall therefore award UGX 4,000,000/= as an estimated amount that was expended on the security services for the above mentioned three districts.

General damages:

It was the submission of counsel for the plaintiff that general damages are by their nature compensatory for the wrongs done. He relied on *David Etuket & anor Versus The New Vision Printing & Publication Corp, HCCS No.86 of 1996*. He contended that in the present case, the wrongs had been pleaded and proved.

I find that the plaintiffs, through the evidence of its two witnesses proved that the 1st plaintiff and its members were greatly inconvenienced due to the negligence and unlawful acts of the NGO Board. Its offices were closed, the plaintiffs were evicted by the Land lords of the rented premises, and all its projects and services came to a standstill.

I accordingly award UGX 30,000,000/= as general damages to the plaintiffs.

Exemplary damages:

It was the submission of counsel for the defendant, that there was no conduct that was reckless, inconsiderate or high handed that justifies the award of exemplary damages in the present case.

In *Obong Versus Municipal Council of Nairobi [1971] EA 91* where court held that;

“...exemplary damages for tort may only be awarded in two classes of case ...: these are, first, where there is oppressive, arbitrary or unconstitutional action by the servants of the government and, secondly where the defendant's conduct was calculated to procure him some benefit ...”

I find that although the NGO Board was acting in the execution of its duties and powers and in public interest, its actions in revoking the 1st plaintiff's Certificate of Registration without affording it a right to be heard was unconstitutional and oppressive to the 1st plaintiff. I shall therefore award UGX 2,000,000/= as exemplary damages to the plaintiff.

In conclusion, the suit against the defendant succeeds and awards to the plaintiff made as follows:

1. Special damages - UGX 8,586,000/=
2. General damages - UGX 30,000,000/=
3. Exemplary damages - UGX 2,000,000/=
4. 15% Interest on the award (1) above from the date of filing the suit till payment in full.
5. Interest at court rate on awards in (2) and (3) above from the date of judgment till payment in full.
6. Costs of the suit.

Orders accordingly.

Elizabeth Musoke

JUDGE

18/09/2015