

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

CIVIL APPEAL NO. 152 OF 2016

UMEME LIMITED----- APPELLANT

VERSUS

YOVANI HOTEL LIMITED..... RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The facts giving rise to this appeal are that the appellant disconnected power from the respondent's hotel premises and the plaintiff claimed that he was up to date in payment of his electricity bills. The power supply was disconnected on 23rd November 2009.

The appellant in its defence made general denials and contended that its workmen who disconnected the appellant's power performed their duty as instructed.

The respondent filed a suit at the Chief Magistrates Court of Kampala at Mengo in 2011 and the same was heard and determined in favour of the respondent in 2016. The appellant dissatisfied with this decision appealed to the High Court.

The appellant appealed to this court and set out 3 grounds of appeal as hereunder;

The grounds of appeal as they appeared in the Memorandum of Appeal were;

1. The learned Magistrate erred in law and fact in holding that the Appellant unlawfully disconnected the Electricity from the Respondent.

2. The learned Magistrate erred in law and in fact when she upheld the respondent's claim of special damages in absence of strict proof of the same.
3. The learned Magistrate injudiciously exercised her discretion when she awarded excessive general damages of 15,000,000/=.
4. The learned Magistrate injudiciously exercised her discretion when she awarded excessive interest of 24% per annum from the date of Judgment till payment in full.
5. The learned Magistrate erred in law and in fact when she failed to judiciously evaluate all the evidence on record thereby arriving at an erroneous and unjust conclusion.

The appellant prayed for the appeal to be allowed, the decision and orders of the Magistrate be set aside with costs to the appellant.

At the hearing of the appeal, the appellant was represented by Learned Counsel *Nakiranda Rebecca* and the respondent was represented Learned Counsel *Didas Nkurunziza*. In the interest of time the court directed that the matter proceeds by way of written submissions.

It is true that the duty of this Court as first appellate court is to re-evaluate evidence and come up with its own conclusion.

This position was reiterated by the Supreme in the case of ***Kifamunte Henry v Uganda SCCA No. 10 of 1997***, where it was held that;

"The first appellate court has a duty to review the evidence the evidence of the case and to reconsider the materials before the trial Judge. The appellate Court must make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it."

I have taken the above principles into account as I consider the Appeal. I have considered the record of proceedings and the lower Court and have considered the written submissions of both parties.

At the commencement of the hearing, the appellant abandoned grounds 1,2 and 5 and the appeal was limited to only grounds 3 and 4 of the appeal.

Ground Three

The learned Magistrate injudiciously exercised her discretion when she awarded excessive general damages of 15,000,000/=.

The appellant is challenging the decision of the trial Magistrate on the grounds that Ug Shs 15,000,000/= awarded as general damages was excessive, unfair, unjust and punitive, which is contrary to the legal rationale of award of damages.

The appellant's counsel contended that, in awarding general damages, courts should take into account the fact that they are deemed compensatory and not punitive, for damages are pecuniary recompense given by the process of law to a person for the actionable wrong that another has done to him. *See Christopher Bamweyana vs Herman Byanguye HCCA No. 24 of 2017.*

The appellant's counsel further submitted that there are circumstances under which an appellate court can interfere with the exercise of discretion on award of general damages. ***Mbogo & Another vs Shah [1968] EA 93***, *Sir Charles Newbold P* held that The Court of Appeal should not interfere with the exercise of discretion of a judge unless it is satisfied that;

- a) The Judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or that this amounted to a miscarriage of justice.
- b) That the trial judge acted upon a wrong principle of law.
- c) The amount awarded is so high or so low as to make it an entirely erroneous estimate of damages to which the plaintiff was entitled.

The respondent's counsel in his submission supported the award of general damages by the learned Magistrate since she clearly had the justice of the case in mind when she made the award.

He noted that the appellant had a hotel business which included the provision of meals and refreshments to guests and visitors who would come and go expecting a good and prompt service. The electricity was capriciously and maliciously disconnected for a significant period of time.

It was the respondent's submission that the Learned Magistrate did not apply any wrong principles and came to the right and logical conclusion. The sum of 15,000,000/= as general damages was not inordinately high and was a reasonable award in the discretion of the court which was properly exercised in the circumstances of the case.

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See ***Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21***

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and nature of the acts themselves by which the damage is done. See ***Ouma vs Nairobi City Council [1976] KLR 298.***

This court notes that the learned trial Magistrate noted in her Judgement that; “*General damages are awardable in cases for loss of business income and loss of reputation.*”

And because the defendant acted in a high handed manner without proper explanation from the defendant the plaintiff needs to be compensated.”

It is not in dispute that the respondent lost as a result of the disconnection and he stated in PW1 witness statement that The perishable food started rotting and all the food supplies through putrefaction was lost.

The appellant is operating a hotel business which is quite sensitive and power supply is a must have in order to give the patrons the best hospitality. The business is likely to suffer seriously in its business reputation and could indeed lose out to its competitors.

The learned Magistrate was right in exercise of her judicial discretion in the award of general damages and this court would not wish to tamper with it. This ground of appeal fails.

Ground Four

The learned Magistrate injudiciously exercised her discretion when she awarded excessive interest of 24% per annum from the date of Judgment till payment in full.

The appellant contends that the award of interest of 24% per annum was excessive, unfair, unjust, punitive and unconscionable.

The award of interest and rate of interest just like general damages is an exercise of discretion. The discretion, however, must be exercised on sound judicial principles. The interest in this matter was premised on the fact the respondent is operating a business (hotel business). This business is a trade or commercial transaction of the hospitality industry, and this would attract such a consideration in the rate of interest to be awarded.

Section 26 provides for an award of interest that is just and reasonable. In the case of ***Kakubhai Mohanlal vs Warid Telecom Uganda HCCS No. 224 of 2011***, Court held that;

“ A just and reasonable interest rate, in my view, is one that would keep the awarded interest rate, the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the

prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”

In the present case the award of interest was justified and above all it was awarded from the date of Judgment. The courts have taken judicial notice of inflation and it is the reason for awarding higher rates of interest. Inflation is a phenomenon of which courts have to strike a balance between the competing equities.

This ground of appeal also fails.

In the final result for the reasons stated herein above this appeal fails and is dismissed with costs in this court and in the court below.

It is so ordered.

**SSEKAANA MUSA
JUDGE
12th/10/2018**