

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT No. 160 OF 2016

1. CITY TREK LIMITED
2. MOHAN MUSISI KIWANUKA.....PLAINTIFFS

VERSUS

BATUNGWA FRANK TUMUSIIME.....DEFENDANT

BEFORE HON. JUSTICE MUSA SSEKAANA

JUDGEMENT

BACKGROUND

The 2nd plaintiff while driving motor vehicle **registration no. UAP 817W**, got involved in an accident with the defendant who was also driving motor vehicle no. **UAV 686F** along **Lugogo bypass, Kampala**. The 2nd plaintiff was subsequently charged at KCCA court holden at City Hall vide **Criminal Case No. 18 of 2016**, where he was acquitted on a traffic charge of reckless driving.

The plaintiffs then filed this summary suit seeking special damages to the tune of Ug Shs 64,803,340 (Uganda Shillings Sixty Four Million, Eight Hundred Three Thousand, Three Hundred Forty only), general and exemplary damages; interest and costs of the suit for the inconveniences suffered as a result of having been involved in a motor vehicle accident with the defendant.

The defendant applied to court to file a defence against this case as had been instituted under summary procedure. The defendant filed a written statement of defence wherein they denied liability on all allegations and stated that the defendant was not of the entitled to any of the reliefs sought.

The plaintiff called three witnesses during trial whilst the defendant called one.

The parties' filed written submissions were considered by this court.

During scheduling before court, the following issues were framed for determination by court:

- 1. Whether the defendant caused the accident.*
- 2. Whether the plaintiffs are entitled to damages.*
- 3. What remedies are available to the parties.*

The plaintiffs were represented by Mr. Sebuliba Kiwanuka whereas the defendant was represented by Mr. Muganga John Patrick.

COURT'S DETERMINATION

Counsel for the plaintiff filed written submissions on the following issues;

- 1. Whether the plaintiffs are entitled to special damages of UGX 39,334,851/= as repair costs towards the 1st plaintiff's wrecked vehicle, UGX 2,968,840/= being the plaintiff's paint material lost during the accident and UGX 22,500,000/= arising from rental car charges of vehicle No. UAD 333M from 5th February 2016 to 4th June 2016.*
- 2. Whether the plaintiffs are entitled to general, exemplary and punitive damages arising out of the defendant's actions in causing the accident and actions thereafter that resulted in the 2nd plaintiff's prosecution.*

3. *Whether the plaintiffs are entitled to the interest on the amounts in (1) and (2) above at 23% from the date of the accident on the 4th day of February 2016 until payment in full.*
4. *Whether the plaintiffs are entitled to costs of the suit.*

The defendant on the other hand filed their submissions on the following issues:

1. *Whether the defendant caused the accident*
2. *Whether the plaintiffs are entitled to damages*
3. *What remedies are available to the parties*

Counsel for the plaintiff declined to submit on the issue raised by the defendant as to whether the defendant caused the accident.

Counsel in their submissions in rejoinder submitted that Issue one at page 3 paragraph 1 of the Defendant's submissions as raised by the defendant's counsel, "the occurrence of the accident" was never in dispute and was never reduced to an issue that required submission. In the circumstances and in response to the Defendant's claimed "issue one", We pray that this Court finds the entire submission on the Defendant's "Issue One", moot, irregular, unnecessary and contrary to agreed issues for adjudication and that a Court with jurisdiction has already ruled on the Defendant's culpability and liability for the accident. No further evidence need be provided to argue that the Defendant caused the accident through reckless negligence.

I had an opportunity to peruse the record of proceedings from the criminal trial against the plaintiff wherein the defendant was the complainant and the 1st prosecution witness.

The trial magistrate His Worship Mushebebe Moses Nabende in his ruling stated; **“PW2 the traffic officer who visited the scene immediately after he was called at the scene told court that the incident happened at a black spot and that according to motor vehicle impacts, PW1 although on the highway he was to let the accused go ahead since most of the accused’s car had entered the road. He confirmed to court that it was PW1 who knocked the accused’s motor vehicle...”**

The ruling of the trial magistrate is satisfactory evidence that that the accident was caused by the defendant hence this court finds no reason to delve into this issue as it was conclusively determined during the criminal trial against the plaintiff.

Furthermore the defendant admitted in court to having been driving a motor vehicle without a valid driving licence which is illegal in Uganda. According to **section 35 of Traffic and Road Safety Act Cap 361;**

“No person shall drive any class of motor vehicle, trailer or engineering plant on a road unless he or she holds a valid driving permit or a valid learner driving permit endorsed in respect of that group of motor vehicle, trailer or engineering plant.”

The defendant ought to have been charged with this offence however no criminal charges were ever brought against him!

On that premise I shall proceed to determine whether the plaintiffs are entitled to the remedies sought.

Counsel for the plaintiffs submits that the Plaintiffs are entitled to special damages of UGX 39,334,851 as repair costs towards the 1st Plaintiff’s wrecked vehicle, UGX 2,968,840 being plaintiff’s paint material lost during the accident

and UGX 22,500,000 arising from the rental car charges of vehicle No. UAD 333M from 5th February 2016 to June 2016.

My Lord, the remedies sought by the Plaintiff are premised on the extent of damage suffered. The damages as pleaded by the plaintiffs have been well documented, consistent and admitted into court as evidence. The witnesses testified and the defendant was duly cross examined and all his admissions submitted into evidence.

The Plaintiffs hold the defendant liable for damages and have shown this court evidence of damage by the documents and photographs on record including the special damages that require no additional evidence beyond the testimony of the 1st and 2nd plaintiff, and the mechanic that carried out the repairs.

It is further contended that the court acquitted the 2nd Plaintiff in Criminal Case No. 18 of 2016 when it found the strength of the Defendants own admission extracted through difficulty, of acceptance of liability for the accident and rightly awarded the Plaintiff costs of UGX 2,000,000 (Uganda Shillings Two Million only).

The Defendant throughout this trial has been unconcerned and unmoved, neither apologizing nor shown any contrition about his harmful actions towards the 2nd Plaintiff, a person of impeccable character and reputable position in society and for that, the 2nd Plaintiff holds the Defendant liable to exemplary and punitive damages.

Defendant's submissions.

Counsel for the defendant submitted on the legal position on special damages, arguing that **HON. JUSTICE MUSOTA in the case of ROSEMARY**

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clearly outlined the principles governing the award of special damages to wit;
“....what someone has lost and asks you to give them in damages.”

Although it was held that special damages were not provable only by documentary evidence, it was also held that acceptable oral evidence in proof thereof should, nevertheless be cogent; **GAPCO (U) LTD V TRANSPORTERS LTD (2009) HCB 6.**

From the foregoing, My Lord, it would appear that the guiding principle on cases where the plaintiff prays for special damages without documentary evidence is whether the oral evidence of the plaintiff and his witnesses was cogent enough to raise a presumption of truthfulness thereto which in this case, we respectfully never found any iota of truth and the plaintiff's evidence was never credible for this court to award such colossal sums of money.

Plaintiff's evidence on the claim of special damages of Ugx. 39,334,851, was basically oral and gravely inconsistent, PW1 who is the managing director who would be expected to know all company matters than any other person in the company failed to tell court how this money was spent on repairs as repair costs. PW1 also, in his capacity, as both the son of PW2 and company managing director, he had the liberty to bring to court bank records in form of statements.

What was presented to court were several fabricated invoices without receipts proving actual payments of the alleged sums of money.

The plaintiffs cannot claim paint or material of plaintiff bought by other companies, PW2 stated that like the quotation of assessment made by Toyota

(U) Ltd, the Sadolin paint was sold to Visa Investments. The plaintiff can therefore not claim ownership or loss of the said paint.

PW2 indeed testified that he had to engage car hire services from 5/02/16 to 1/6/2016 at the cost of UGX 150,000 paid to the 1st plaintiff company, a company to which PW1, PW2 and the Plaintiffs' Counsel, are directors.

There was no receipt issued to prove this payment.

General damages in their nature are discretionary and even if this court found that the defendant is liable for causing the accident, which we submit not, court as a temple of justice has a discretion to grant the same in the circumstances or not.

We agree with the position of case law as stated by the Plaintiff's counsel especially the decision in **Butter Worth v Butter Worth & Engelfield (1920) p.126 as held by MCCARDIE J** where it was held that "the expression **exemplary damages means for example's sake.**

Ruling

The plaintiff prayed for special, general and exemplary damages. Special damages were defined in the case of **Mugabi John v Attorney General C.S No. 133 of 2002** as those damages that relate to past loss calculable at the date of trial and encompasses past expenses and loss of earning which arise out of special circumstances of a particular case.

The law relating to special damages is settled. **W.M Kyambadde v MPIGI District Administration (supra) and Bonham Carter V Hyde Park Hotel Ltd (1984)** holding that the guiding principle is that special damages must be specifically pleaded and strictly proved.

However, the case of **Byekwaso v Mohammed [1973] HCD 20** enunciates that the stated position confirms that for as long as there is sufficient proof of the loss actually sustained which is either a direct consequence of the Defendant's action/omission or such a consequence as a reasonable man would have contemplated, this would suffice in place of physical and/or documentary evidence.

The plaintiff sought UGX 39,334,851 as repair costs however the invoice tendered in as evidence did not break down the amounts to total to the figure sought by the plaintiff. Basing on the photographs provided showing the extent of the damage caused by the accident and current market value of the materials needed to repair the damage, I find the figure of **UGX 20,000,000** as sufficient for the repair costs.

The plaintiff is also awarded **UGX 2,968,840** being plaintiff's paint material lost during the accident and **UGX 22,500,000** arising from the rental car charges of vehicle No. UAD 333M from 5th February 2016 to June 2016.

General damages, as are defined by **Black's Law Dictionary at p.417** as damages that the law presumes to follow from the type of wrong complained of.

According to the case of **Kayonza Distributors v Attorney General HCCS No. 211 of 2008**, it was stated that *"the prevailing and accepted principle for the grant of general damages is that they are compensatory in nature for loss suffered and the inconvenience caused to the aggrieved party so that he/she is put back in the same position as he would have been had the offering act not happened."*

Generally, general damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant.

With regard to the inconvenience suffered by the plaintiff as a result of the actions of the defendant, I find **UGX 10,000,000** as sufficient general damages.

With regard to exemplary damages, it has been enunciated that a plaintiff cannot recover exemplary damages unless he or she is the victim of punishable behaviour, **per Lord Devlin in Rookes v Bernard and later in Visram & Karsan v Bhatt [1965] EA 78.**

Exemplary damages may be awarded where the defendant's action was calculated to procure him some benefit at the expense of the plaintiff. The plaintiff must have suffered as a result of the punishable behaviour; **per Fredrick Zabwe v Orient Bank Ltd SCCA N0.4/2006.**

However in this case I shall not award exemplary damages since the trial magistrate already punished the defendant to a tune of **UGX 2,000,000** in costs for the accused (now plaintiff) at the criminal trial. The Trial Magistrate based this amount on the fact that the defendant told court and the investigating team falsehoods leading to the prosecution of accused. I find that award as sufficient to punish the defendant.

The plaintiff is awarded costs.

The plaintiff is also awarded interest on the sum awarded at a rate of 20% from the date of filing this suit until payment in full.

I so order.

SSEKAANA MUSA
JUDGE
20th December