

PUBLIC ANNEX A

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LIRA
CIVIL SUIT NO. 027 OF 2016

ONEKA JACKSON & 5505 OTHERSPLAINTIFFS
VERSUS
ATTORNEY GENERAL DEFENDANT

BEFORE: HON. JUSTICE ALEX MACKAY AJIJI

JUDGEMENT

Introduction:

The Plaintiffs are aggrieved by the omission and commission of the defendant to pursue the claim, the plaintiffs formed themselves into an organization called Lango Camp Host Association with a membership of 5505 members and registered as such with Registration Certificate N0.10007/1982083.LACHA is also a co-plaintiff in this suit.

The plaintiff's facts are that between 2003 -2007, at the peak of the northern Uganda insurgency, the Defendants's agents which included the UPDF Soldiers, central Government officials, Local Government officials and other security agencies enforced the Government of Uganda policy of creation of IDP camps. This was done throughout northern Uganda including Lango sub region where the cause of action emanated from .The affected districts in Lango sub region were Lira, Otuke, Apac, Oyam, Dokolo, Kole (formerly part of Apac) Districts.

The IDP camps were set on the plaintiff's land. In the period of the subsistence of the IDP camps ,the IDP camps, the IDPs destroyed the soil and crops on the hosts

land .Plaintiff had before the invasion by the IDPs, planted various crops including orchard of pineapples, bananas, mangoes, avocados, oranges and some had planted or maintained eucalyptus, Nsambia, palm, shear nut and other natural trees. In the garden, they had planted a range of crops such as cassava, potatoes, maize and other subsistence .In their homes, the plaintiffs had graveyards, pit latrines, residential houses and other domestic animals like chicken, goats, pigs etc which were destroyed and for the case of food all eaten or stolen by the huge population of approximately 1,500,000/= people at any one time.

The big population of IDPs destroyed the plaintiffs' environment which included their personal land measuring app 25,500 acres by polluting with toxic chemicals, solid waste, plastic bags ,deforestation, over use of land and in many other ways. Some dug house foundations, some cut grass and leaves to build roofs, some polluted the air by burning charcoal, almost all used petroleum products for lighting hence pollution etc. The environment was destroyed in 3 ways, pollution, degradation and damage as cited above. Hence the IDP camps left gaping holes in their land which now require to be refilled at a high cost which the local person cannot afford.

Legal Representation:

The Plaintiffs are represented by Counsel Adams Rajab Makmot Kibwanga from M/s Makmot -Kibwanga & Co.Advocates and Counsel Drake Twebaze from M/s Nzige, Jamero & Co. Advocates while the Defendants is represented by Counsel Doris Tuheisomwe, a State Attorney from the Attorney General Chambers.

During scheduling, the parties filed and framed issues for determination as follows;

1. *Whether the plaintiffs have a cause of action against the defendants?*

2. *Whether the defendant is vicariously liable as claimed by the plaintiffs?*
3. *What are the remedies available to the parties?*

The Defendant raised a preliminary objection to the effect that the suit is bad in law, misconceived and ought to struck out. However after listening to submissions of both parties on the preliminary objection, this Court came to the conclusion that the same lacked merit and hence overruled it.

Resolution of Issues by Court:

1. Whether the plaintiffs have a cause of action against the defendants?

A cause of action means 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.

Cause of action was well settled in the case of **Auto Garage vs Motokov (1971) EA 514** where all the Plaintiff has to prove are; whether the plaintiff has a right, whether the said right has been violated and lastly, whether the Defendant is responsible or liable for that violation.

In the instant case the Plaintiffs stated in their plaint as per para 4 of the plaint that they are IDP Camp hosts whose right is to have a clean and healthy environment, fertile land to grow their food and own property however this right was violated by the Defendant and the defendant is liable. Hence the Plaintiffs are aggrieved by that conduct.

The Court was moved to locus in 5 selected former IDP camps that is Aloï in Aleptong District ,Barlonyo in Lira District ,Alito in koloe district , Abok and Ngai in Oyam Distinct .For example in Aloï IDP camp ,Photographs marked

Lacha Aloï 1 and 2 show the degraded land scape and dilapidated camps and other unused structures left behind by the IDPs, Lacha Aloï 3 showed wide holes filled with non-bio gradable materials and other wastes, Lacha 4 showed stunted trees in the back ground with degraded grazing land, Lacha Aloï 5 and 6 shows plaintiffs with degraded dessert.

Barlonyo IDP camp, 1, 2, 3 and 4 shows permanent buildings which are evidences of trespass by the Defendant.

Lacha Barlonyo 6, Lacha Barlonyo 7 and Lacha Barlonyo 8 show evidence of mass grave and a memorial site with permanent structures with more than 121 people massacred and buried on the plaintiff's land.

Alito IDP Camp, photographs LACHA Alito 1, 2 depict degraded landscape left behind by IDP.

Abok IDP Camp, which depicted degraded landscape of Abok former IDP Camp. there are also big wide gaping holes left behind, the dried tree stumps and vast expanse of the land which are rendered unproductive.

LACHA Abok 20 depicts structures left behind on plaintiff land by the defendant's agent and other accredited services, and bio-degradable materials and other wastes. for example kaveera, plastics, chemical flow from toilets, tracks left behind by food delivery trucks during the IDP camps days. LACHA 25, LACHA 26, LACHA Abok 27 and LACHA Abok 28 show evidence of mass grave and memorial site with permanent structures erected on the plaintiffs land yet burial grounds cannot be used for other productive activities.

The Defendant denied liability and stated that it was not responsible for any action or omission that might have resulted into the Plaintiffs' predicaments and further

that the Plaintiffs have no cause of action against the Defendant.

Therefore I find that indeed the Plaintiffs have a cause of action against the defendants since their right to property and to a clean environment was actually violated by the defendant and they are liable.

2. Whether the defendant is vicariously liable as claimed by the plaintiffs?

Black's law Dictionary, 9th Edition at page 998 defines vicarious liability as the liability that a supervisory party, such as an employer bears for the actionable conduct of a subordinate or associate, such as an employee, based on the relationship between the two parties.

Therefore for one to be vicariously liable for the acts of another, there should exist a relationship between the party and the person who did the negligent Act, and the act ought to have been done in the course of employment and not when the person who did it is acting on a frolic of his own. This was echoed in the case **Okupa –v- Attorney General & 13 Ors MC No. 14 of 2005 [2018] UGHCCD 10** to mean “a legal doctrine where a person, himself blameless, is held liable for another person's conduct”. Court further went on to state that “the rule is often justified by reference to the latin maxim “qui facit per alium facit per se” meaning that he who acts through another acts himself”

According to the East African Cases on the Law of Tort by E. Veitch (1972 Edition) at page 78, an employer is in general liable for the acts of his employees or agents while in the course of the employers business or within the scope of employment. This liability arises whether the acts are for the benefit of the employer or for the benefit of the agent. In deciding whether the employer is vicariously liable or not, the questions to be determined are: whether or not the employee or agent was acting within the scope of his employment; whether or not

the employee or agent was going about the business of his employer at the time the damage was done to the plaintiff. When the employee or agent goes out to perform his or her purely private business, the employer will not be liable for any tort committed while the agent or employee was a frolic of his or her own.

Therefore, in this case, the defendant through his agents (in the course of employment) was responsible for the forceful creation of the IDP camps on the land of the plaintiffs hence causing grave damages to the environment as well as grave loss to the plaintiffs.

3. What are the remedies available to the parties?

The Plaintiffs in his pleadings prayed for:

1. Compensation.
2. Restitution of the environment
3. Permanent injunction
4. Punitive or exemplary damages
5. Mesne profits
6. General damages.
7. Interests
8. Costs of the suit
 1. Compensation.

The court orders the Defendants to pay the Applicant compensation for the arbitrary and unlawful deprivation of the right to a clean and sustainable environment, land that has been rendered infertile

The Plaintiffs are, therefore, awarded compensation of **UGX 5,000,000 (Uganda Shillings Five Million) per Plaintiff.**

2. General damages.

It was submitted by the Counsel for the Plaintiffs that each Plaintiff is entitled to general damages for the suffering they have been undergoing ever since they were deprived of the source of livelihood, they lost relatives out of poverty occasioned by the defendant and some have broken homes due to inability to support their families. Hence they prayed for 10,000,000/= for each Plaintiff amounting to shs.55,060,000,000.

With regard to the claim for general damages, I do recognize the rationale for such a claim as was aptly stated in Vol. 12 Halsbury's Laws, 4th Edition, para. 1202 as follows:

"...Damages are pecuniary recompense given by process of law to a person for the actionable wrong that another has done to him."

In the instant case, having established an actionable wrong by the Defendant as against the Plaintiffs, it does follow that the Defendant is entitled to compensate Plaintiffs for the damage, loss or injury suffered.

As far as damages are concerned, it is trite law that general damages are awarded at the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages losses or injuries suffered as a result of the defendant's actions.

I find that the Plaintiffs have discharged their duty to prove damages and inconvenience caused as a result of the Defendant's actions.

The Plaintiffs are awarded **UGX 3,000,000 (Uganda Shillings Three Million)** each as general damages.

3. Punitive and exemplary damages

Counsel for the Plaintiffs submitted that it is clear from the Plaintiff's evidence that the acts and conduct of the Defendant were, "oppressive, arbitrary and unconstitutional," and therefore an award of exemplary damages would serve not only as a punitive measure but also as a deterrent to the commission of similar negligent acts in the future.

The rationale behind the award of exemplary damages is that they should not be used to enrich the Plaintiff, but to punish the Defendant and deter him from repeating his conduct.

An award of exemplary damages should not be excessive. The punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings, if the conduct were criminal. Per Spry V.P. in **Obongo Vs Municipal Council of Kisumu [1971] EA 91**. All circumstances of the case must be taken into account, including the behaviour of the plaintiff and whether the defendant had been provoked. *See O'Connor Vs Hewiston [1979] Crim. LR 46, CA; Archer Brown [1985] QB 401.*

Bearing those principles in mind I find that an award of **UGX 500,000 (Uganda Shillings Five Hundred Thousand)** is sufficient as exemplary damages for each Plaintiff.

4. Permanent injunction

The Plaintiffs submitted that a permanent injunction be issued against the defendant stopping him from ever polluting the environment without proper plans of restituting the environment. Therefore, the implemented IDP policy should not be repeated.

5. Mesne profits

Mesne profits are defined in Section 2(m) of the Civil Procedure Act as ‘those profits which the person in wrongful possession of the property, actually received or might receive with ordinary diligence have received from it, together with interest on those profits, but shall not include profits due to improvements made by the person in wrongful possession not proved’. In **Busiro Coffee Farmers & Dealers Ltd versus Tom Kayongo & 2 ors**, HCCS No. 532 of 1992 cited with approval from the case of **Kyalimpa versus Nassozi CS. No. 794 of 2016**, it was held that;

“...Where a Defendant remains in wrongful possession, he is liable to pay mesne profits to the person entitled to possession, hence for a claim of mesne profits to accrue, a Defendant must be in wrongful possession of the suit property as against the Plaintiff and deriving profits from the property”.

I find no evidence of the profits which the occupants of the suit land have actually received. Mesne profits can therefore not be granted.

6. Restitution of the environment

The “Polluter Pays Principle” as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “sustainable Development” and as such the Polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.”

Therefore, in this case the Defendant is liable to pay **UGX. 4,000,000/- (Uganda Shillings Four Million)** to each of the Plaintiffs as the cost of restoring the environment.

7. Interest and costs of the suit

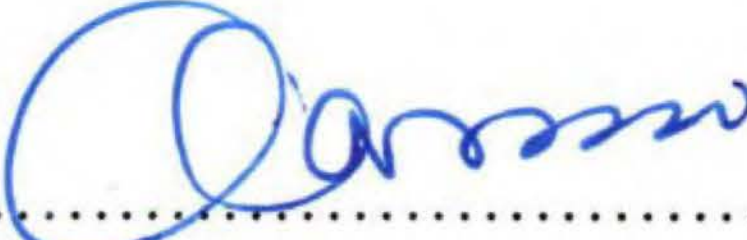
Similarly, section 26(2) of the CPA makes provision for interest on claims for monetary payment. Further, it is now well established law that costs generally follow the event. See **Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC) and Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35**, where it was held that Courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

Therefore, the Plaintiffs are awarded costs of this matter.

In the instant case, I award interest at the rate of 12.5% on the general damages awarded above from the date of judgment until payment in full

I so order.

Dated and delivered in Lira, this ^{8th} 21 day of ^{Feb} 2023

.....


ALEX MACKAY AJIHI

JUDGE