

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
CIVIL SUIT NO.27 OF 2021**

NABAYINDA HADIJAH:.....:PLAINTIFF

VERSUS

1. KIWUWA ROBERT

2. BYAKATONDA PAUL alias KAGAME:.....:DEFENDANTS.

Before; Hon. Justice Victoria Nakintu Nkwanga Katamba

JUDGEMENT.

Introduction.

The Plaintiff brought this suit against the Defendants jointly for;

1. Recovery of Ugx. 52,000,000/= that was forcefully taken by the Defendants.
2. An order preserving properties purchased using part of the money that the Defendants took from the Plaintiff.
3. General damages
4. Interest on 1 and 3 from date of filling until full payment.
5. Costs of the suit.

Back ground.

The Plaintiff alleges that on 11th September 2018, the plaintiff was coming from Bushenyi where she had gone to supply rice to her customers, when she was attacked by the Defendants and robbed at gun point of Ugx. 52,000,000/= (fifty two million shillings).

The Plaintiff together with other people she was travelling with made statements at Masaka Police Station. The Defendants were later tracked, arrested and interrogated wherein they admitted to robbing the Plaintiff and that the 1st Defendant admitted to having used part of the money taken from the Plaintiff to wit; Ugx. 6,000,000/= to renovate his father's house, Ugx.7,000,000/= to clear a loan and also paid school fees of Ugx. 5,000,000 for his Children and that he also purchased a piece of land with part of the money.

The Defendants were subsequently prosecuted and found guilty of robbery and sentenced to imprisonment before the General Court Martial vide Criminal Case No. UPDF/GCM/054/2018. Upon the Defendants conviction, the Plaintiff demanded for the money from them but they refused to return it. Thus this suit for recovery.

The Plaintiff also alleged that as a result of the Defendants actions, she lost Ugx. 52,000,000/= and also suffered mental anguish and psychological torture. She further averred that she lost business profits due to non-use of the money of wherefore, she claims an interest at a commercial rate of 30%.

The Defendants never filed written statements in their defence despite having been served with summons to file defences to the claim. As a result, interlocutory judgment was entered against the Defendants and the suit proceeded ex parte under **Order 9 Rule 11(2)** of the **Civil Procedure Rules**.

The Plaintiff proceeded by way of a witness statement. The Plaintiff relied on the testimony of only one witness, that is; the Plaintiff herself.

Plaintiff's case.

It was the Plaintiff's case that she is a business woman and on 11th of September 2018, she was coming from Bushenyi where she had gone to supply rice to her customers. The Defendants attacked her and robbed her of Ugx. 52,000,000/=. After the incident, she together with other persons she was with at the time of the incident recorded statements at Masaka Police Station. The Defendants were later tracked and arrested by the Police. That Upon interrogation, the Defendants admitted to taking the money and in the 1st Defendant's charge and caution statement, he admitted to having used Ugx. 6,000,000 to renovate his father's house, Ugx.7,000,000/= to clear a loan and also paid school fees of Ugx. 5,000,000/= for his children. The 1st Defendant also used part of the money to buy land.

The Defendants were later charged, tried, convicted and sentenced to 25 years by the General Court Martial. A copy of the Judgment of the General Court Martial was attached and marked A. She further states that as a result of the Defendants' actions, she has suffered a loss of Ugx. 52,000,000/=. She then stated that she lost business profits due to nonuse of her money from the 11th day of September 2018. It was also her testimony that she incurred to wit, Ugx. 6,000,000/= for the tracking the Defendants and Ugx. 2,000,000/= for transporting witnesses to Court during the trial in the General Court Martial. After the decision of the Court Martial, she asked the Defendants to return the money but they adamantly refused.

That was the Plaintiff's case.

Determination by Court.

The legal burden rests on the Plaintiff to prove her case and the standard is on the balance of probabilities. (see; *Kamo Enterprises Limited versus Krystalline Salt Limited, SCCA. No.8 of 2018*)

It is my observation that the Plaintiff's claim is based on the tort of conversion.

Conversion is committed when a party unlawfully interferes with another Party's possession or title in goods or chattels. (see; *Freku Enterprises versus Attorney General [1991] HCB 68*).

The tort of conversion compensates for loss of the right to possession of the chattel and to succeed in a claim for conversion, a plaintiff must prove that they were entitled to immediate possession of a chattel and that they were deprived of the same by the Defendant. (see: *Wenje versus Nabimanya and Another, HCCS. No.605 of 2014*).

It was the Plaintiff's case that the Defendants robbed her of ugx. 52,000,000/= on 11th September 2018 and that the Defendants were later prosecuted and sentenced to imprisonment for the robbery.

A copy of the Judgement of the General Court Martial was attached to the witness statement. On persual of the Judgement at the General Court Martial, at trial it was proved beyond reasonable doubt that indeed the Defendants committed an act of robbery against the Plaintiff and as a result, the Plaintiff lost Ugx. 52,000,000/= to the Defendants. The Defendants were convicted and sentenced to imprisonment for the robbery.

This evidence was never challenged.

As noted earlier in the Judgment, the Defendants did not file written statements of defence or enter appearance despite having been served with summons. The general principle of law in such circumstances is that failure to file a defence raises a presumption of constructive admission to the allegations in the Plaint except as to damages. (see: *Wangubo Sefu versus Bashiri Magoola and Another, HCCA. No.44 of 2012*).

It is therefore my finding that the defendants are liable for the loss occasioned to the Plaintiff, that is; they dispossessed the Plaintiff of her chattel to wit; Ugx. 52,000,000/=.

In *Hajji Asuman versus Equator Growers (U) Ltd, SCCA. No.07 of 2005*, it was held that where an interlocutory judgement is entered in favor of the Plaintiff, the question of liability

of the Defendant is no longer in issue. What is in issue is the assessment of the quantum of damages.

I now seek to resolve whether the Plaintiff is entitled to the damages sought.

The Plaintiff sought Special damages, general damages, interest on the damages and an order preserving the properties bought with proceeds arising from the conversion.

Special damages.

Special damages must be specifically pleaded and proved, but strictly proving does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence. (see; *Gapco (U) Ltd versus A.S. Transporters (U) Ltd CACA. No.18 of 2004*)

The Plaintiff stated that the Defendants dispossessed her of Ugx. 52,000,000/=. This evidence was supported by the findings of the General Court Martial in its judgement where among its findings, it was found that the Defendants indeed robbed the Plaintiff of Ugx.52,000,000/= and this money has never been recovered.

In the premise, it is my finding that the Plaintiff is entitled to Ugx.52,000,000/= as special damages.

The Plaintiff also claimed Ugx. 6,000,000 and Ugx. 2,000,000 that she used to track the Defendants and transporting witnesses to Court respectively. I am not inclined to grant these amounts because costs of investigations and prosecution are borne by the State. (see: *Odiya Richard versus Okello John Bosco and others, HCCS. No.45 of 2018*).

General damages.

The general principle with regards to general damages is that they are granted at the discretion of Court. The purpose of general damages is to compensate the aggrieved party, fairly for any inconveniences occasioned by the Defendants' actions and to put the aggrieved party in a position as if the injury complained of did not happen. (see: *Dharamshi versus Karsan [1974] 1 EA 41*).

Considering the inconveniences occasioned by the Defendants to the Plaintiff; that is converting her money and yet she is a business woman and also considering the mental anguish and psychological torture occasioned by the actions of the Defendants on the Plaintiff, I consider the sum of Ugx. 30,000,000/= sufficient as general damages.

An order preserving any properties purchased from proceeds of the conversion.

Under *Section 33 of the Judicature Act Cap 13*, this Court has power to grant all such remedies as are necessary to conclude all the matters in controversy between the Parties while *Section 98 of the Civil Procedure Act*, is to the effect that the Court has power to grant any orders necessary to meet the ends of justice.

Based on the above provisions, it is my opinion that this Court could have issued orders to preserve the properties purchased as a result of the conversation however, it is my observation that besides stating that part of the money was used by the Defendant to buy land, the Plaintiff never produced evidence of the details of the land, location or ownership to enable Court exercise its jurisdiction. The Plaintiff never led any evidence to support the fact that there were any other properties purchased by the Defendants on account of the proceeds of the robbery. The Plaintiff ought to have proved by way of evidence that they are entitled to this remedy, which in my observation is a burden the Plaintiff failed to discharge in order to be granted this remedy. (see: *Mwanda and 3 others versus Tugumisirize and Another, HCCS. No.104 of 2017*)

Secondly, this remedy as sought by the Plaintiff can best be addressed during the execution process. As a successful litigant in this claim, the judgement creditor may identify property belonging to the Defendants and attach the property in execution.

In the premise, I am disinclined to grant this order.

Interest.

Section 26(2) of the Civil Procedure Act provides that; *Where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.*

It is my observation that interest is granted were an aggrieved party has been unjustifiably deprived of use of his/her money by another party. (see; *Amazima (U) Ltd versus Mahdi, HCCS. No.453 of 2016*)

The Plaintiff was deprived of use of her from 2018, yet she is a business woman and relies on such monies to sustain her business. I therefore consider that the circumstances warrant grant of an interest. I consider an interest rate of 8% per annum sufficient.

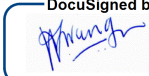
It is trite law that costs follow the event. (see; *Section 27 of the Civil Procedure Act*).

Costs shall be awarded to the Plaintiff.

Conclusion and orders.

1. The Defendants shall pay Ugx. 52,000,000/= as special damages.
2. The Defendants shall also pay Ugx.30,000,000/= in general damages.
3. The sums in 1 and 2 shall attract an interest of 8% per annum from the date of filing the suit until full payment.
4. Costs of the suit are awarded to the Plaintiff.

I so order.

DocuSigned by:

C2EFAEDDFD0D42E...

Dated and delivered electronically at Masaka this 30th day of June 2023.

Victoria Nakintu Nkwanga Katamba.

Judge.