



requested to hand over all the plaintiff's property in his possession and to stop managing any projects, Churches or conducting any service or ministry within the plaintiff's churches or projects. That he handed over some but not all the plaintiff's property. In particular he declined to hand over the grinding mill and its land, motor vehicle **Reg NO.UAE 743F**, a motorcycle **Yahama registration NO. UAC 505D**, a trimmer machine, graduation gowns, and several land titles of the Churches at Bugiri, Namala, Makoma, Bumooli, Nakabaale, Mulwande, Lugaga Bukimo, Bumeru Nambengere, Buwemba and Otabongo, some of which he has continued to wrongfully manage .

- 1.3** In response, the defendant claimed that he was unlawfully relieved of his duties. He contended that he handed over all churches and property belonging to the plaintiff including the grinding mill and all documents relating to the land on which it is situate, a trimmer machine, graduation gowns and 46 land titles. That the two motor vehicles were given to him by Vince Marcarty the Executive Director of International Ministries of the Open Bible Churches with Karl Francis as a token of appreciation for his dedicated service to the Church. He denied having control over any of the plaintiff's Churches, any misappropriation of Church funds, and contended that he had infact expended his own money towards the plaintiff's projects.
- 1.4** The defendant raised a counter claim for the recovery of **UGX 261, 500,000/=** spent by him on construction of the plaintiffs churches and buying church land. In his submissions, counsel for the defendant raised a preliminary point of law with respect to the counterclaim. Their submissions will be addressed within the third issue.

**2.0** The agreed issues by the parties.

- a) **Whether the defendant is in unlawful occupation, control or possession of the plaintiff's churches, projects or property.**
- b) **Whether the defendant should hand over the plaintiff's property in his control or possession.**
- c) **Whether the plaintiff is indebted to the defendant in the amount of UGX. 261,500,000/=**
- d) **What remedies are available to the parties?**

My understanding of the third issue is that the defendant, by counterclaim, made a definite claim against the plaintiff. I find it reasonable to attend to that issue as one pointing to a remedy. It will thus be considered under the forth issue.

**3.0 ISSUE ONE AND TWO:**

**Whether the Defendant is in lawful occupation, control or possession of the plaintiff's churches, projects or property.**

**Whether the defendant should hand over the Plaintiff's property in his control or possession.**

**3.1** The evidence adduced by the plaintiff is that the defendant was removed from being the General Over Seer of the plaintiff's organization on the 18/10/2007 and that upon his removal, he was requested to hand over all the properties of the plaintiff in his control/ possession and cease managing or control over any of the Churches. Counsel for the plaintiff argued in his submission that the items claimed by the plaintiff as having not been handed over are not listed in **EXP 4** yet the defendant claimed to have handed over everything to the organization. In reply, counsel for the defendant stated that there is no consistent evidence to show that the defendant has remained

in occupation of the properties of the plaintiff or failed to hand over Church property save that which he accepted to have retained, and given reasons.

**3.2** The plaintiff claimed that even after his services were terminated, the defendant remained in control of some of the Churches or interfered with their operations. I saw no evidence pointing to which specific Church or project of the plaintiff that the defendant retained or even more specific, what kind of interference was being referred to. It appears infact that the parties in D. Exhibit 3, the memorandum of understanding dated 18/8/2018, conceded to the fact that the period of transition was not well thought out, or carried out. That confusion could have resulted into the defendant retaining some presence in some Churches. There was no evidence adduced to show that the defendant was ever formerly prevented from participating in activities of any Church and he declined from doing so. In fact, in the same document (paragraph 3 on page 3), the defendant was permitted to continue participating in all Christian activities for an unspecified period. Under such circumstances, there would be no basis for the Court to grant a permanent injunctive order against the defendant with respect to conducting any services and ministry within the plaintiff's Churches or projects.

**3.3** **PW1** in his testimony stated that the defendant failed to hand over the operations of the organization like the motor vehicle, motor cycle, graduation gowns, trimmer machine for cutting paper, grinding mill, land deeds of the mill, land title for the Bugiri church and agreements for churches which include Oturong and Buwenge. That he handed over only 46 land titles/agreements and out of 120 churches, 12. **PW2** added that although he handed over the churches, the plaintiff was still in control of

some. **PW3** listed the land agreements to include those of Nongwe, Taboug, Buwembe, Kayogera and Kaberamaido.

**3.4** Both parties appeared to be in agreement that once the defendant was relieved of his duties, he made a formal hand over of certain properties of the plaintiff. According to the defendant, the handover was done in phases on 29/10/07 and 13/12/07. It is clear in P. Exhibit 4 that a hand over ceremony was done on 13/12/07 and the items handed over were listed in the presence of several Church officials, some of whom are listed as directors of the plaintiff. In my view, that document more than any other evidence should guide Court of what was not handed over or that which remained under the defendant's control, bonafide or otherwise. I would caution myself that the parties did in the memorandum concede that the hand over was done in haste and without proper verification of the plaintiff's inventories and even then, lacked proper inventories for her assets and the hand over was done partly through word of mouth and without proper documentation. (See paragraph 3 on page 3).

**3.5** It is not clear from the pleadings and testimonies of the witnesses the number of churches owed by the plaintiff or at least, the number under the care of the defendant at the point his services were terminated. That notwithstanding, In P. Exhibit 4, (No. 21), it is shown that the defendant handed over all the churches stated to be 120 in number but yet to be ascertained. It was not shown by any of the plaintiffs' witnesses what kind of control or management he still maintained over some Churches which were infact not named. PW3 did state in his testimony that the defendant handed over the land title for the Bugiri Bible church. That from the time of filing this suit, most of the churches are now under their custody after the

defendant agreed to release them. I would accordingly find the claim that the defendant continued to influence and manage and control some of the plaintiff's Churches, redundant and not tenable.

**3.6** None of the plaintiff's witnesses ever mentioned the citations of the title deeds on which the Churches were built. Only one title was mentioned, but even then, the title deed or its citation was not adduced in Court. My observation is supported by P. Exhibit 8A-E all of which were agreements of sale/land purchase by the plaintiff for land of different plots of land, probably on which Churches were constructed. That notwithstanding, it is shown in P. Exhibit 4 that the defendant handed over 46 Church land deeds. Since no land titles were proved as missing, I understand the claim to be for 12 land purchase agreements and not land titles.

**3.7 PW1** stated that the Plaintiff's documents were at the time he gave testimony being kept in Kampala at the headquarters. That previously, they were kept with the defendant at his home. I note that the defendant made no specific denial that he had retained the ownership documents with respect to the particular 12 Churches mentioned. However, it should be understood that the plaintiff as claimant had to prove on a balance of probabilities that when the defendant handed over the agreements in his possession, he retained those claimed in the plaint. In P. Exhibit four, 46 Church agreements were received but not specified. It is could be possible that those claimed were infact part of those acknowledged as received. If I were to consider the manner in which the hand over was done, there is no certainty that the agreements were not handed over and as such, I am unable to allow a prayer that was not proved to the required standard.

- 3.8** It was claimed that the defendant refused and neglected to hand over a grinding mill and all land on which it is situate. It is indicated in P. Exhibit 4 (No.20), that the defendant handed over the title deed for a grinding mill in Bugiri. Both PW1 and PW2 testified that the defendant declined to hand over the grinding mill which is still under the defendant's custody. It would therefore follow that the claim was for the defendant to hand over possession of the mill and all its attachments.
- 3.9** On his part, the defendant stated that he made a hand over on two different occasions and that the items he handed over were itemized, listed and signed for. Defendant's counsel in his submissions, argued that since the defendant had shown that he had ceased to occupy the project since he was relieved of his duties, then it was the responsibility of the plaintiff's agents to follow up on the properties of the plaintiff, which they did not do.
- 3.10** I do agree with that submission. According to P. Exhibit 5, a special resolution of the plaintiff, the defendant was formerly relieved of his duties. It was stated in paragraph 6 that he was expected to **hand over** "*all documents, vehicles, properties, money and other materials....*" of the company in his possession by then, to the newly appointed advisory committee chairman, one Rev Jackson Mugerwa by 20/11/07. In P. Exhibit 4, the defendant handed over the title deed of the grinding mill (Item No. 20). By that date, both parties were fully aware that the defendant who had been relieved of his duties had no further powers over the properties mentioned in the hand over list. It was not mentioned anywhere in that list, that, the defendant was expected to have another opportunity to hand over the physical assets of the mill. In my view, although the resolution mentioned hand over of properties, the resolution was a decision of the

Board which had to be effected by the Board and not the defendant who was after 18/10/2007, no longer an employee of the company.

**3.11** I am persuaded therefore that it was enough for the defendant to hand over the title and it was then incumbent of the plaintiff to make a request for a formal hand over of the mill or through her agents attempt to gain access and possession of the mill and failing to do so, ask the defendant for assistance. It was never shown anywhere in evidence that there was any attempt made by the plaintiff to gain physical possession of the mill or a demand by them that the defendant hands it over physically. I thereby find the claim that the defendant hands over vacant possession of the mill untenable. However, since ownership of the mill is not in dispute as against the two parties, an order for vacant possession in favour of the plaintiff by their means and cost is allowed.

**3.12** From the testimony of the Plaintiff's, witnesses there was uncertainty as regards the number of gowns that the plaintiff was expected to return. In his testimony, PW1 could not recall the number of gowns. I am unable to allow an uncertain claim and rule that the defendant has no obligation to return any gowns to the plaintiff.

**3.13** With regard to the electricity bill in arrears, the plaintiff produced a demand letter from M/s Kampala Associated Advocates addressed to the plaintiff attaching a bill in the sum claimed. PW2 stated that in their Constitution it is the treasurer authorized to spend money with the approval of the Board. However he did not know the inflows and the out flows of the funds. PW3 who was the treasurer at the material time, stated that he never received any money from the maize mill as the defendant retained all responsibility over



it and prevented him from carrying out his duties as treasurer. It would follow then that PW3 was unreasonably prevented by the defendant from paying the electricity bill on time. It is thus fair that the defendant, who did not deny having control of the mill proceeds and admitted being the general overseer, supervisor and coordinator of the plaintiff's projects, should pay the electricity bill of UGX3, 315,849.

**3.14** On the other hand, the trimmer machine was not among the items included in Exhibit 4 and the defendant offered no explanation to whom and when he handed it over. He would accordingly be liable to return it to the plaintiff.

**3.15** The defendant did not deny the fact that he retained the two motor vehicles claimed. He stated in his testimony that the plaintiff's donors made the decision to return to him the log books of both vehicles and receipts representing his contribution towards the purchase of one and repairs he undertook on the other as a token of appreciation of all the work he had done for the Plaintiff's churches. He attempted to adduce what he termed a hand over document dated 13/12/2007 to prove the gift, but was with reason, rejected by the Court. That notwithstanding, he did acknowledge in his testimony that the two vehicles belonged to the plaintiff and not to her donors or directors as personal property.

**3.16** It was not a disputed fact that the plaintiff is a company limited by guarantee duly registered under the Company's Act of Uganda. The vehicle and the motor cycle were properties of the plaintiff and their disposal could only be achieved by resolution of the Board. In the case of **Real Gaba Market Property Owner Vs KCCA HCCS 248/ 2008** court held that a company cannot transact or carry out any business in the absence of the company

resolution authorizing the same. No resolution was made authorizing the gift, and in fact, the gift was allegedly made by one Vince Marcarthy who was not shown to be a director of the company which would defeat the defendant's claim. He is thus liable to return to the plaintiff the **Motor vehicle, White Double Cabin Dyna, Single wheel, Reg. No.UAE743F** and **Motorcycle Yamaha 100CC, reddish-maroon in colour , Reg. No. UAC 505D** to the Plaintiff as her rightful property.

**3.17** There was in addition protracted evidence adduced by the plaintiff at the trial and in submissions of how the defendant allegedly mismanaged and diverted the plaintiff's funds over the period that he was in their employment. The evidence of the alleged mismanagement was largely inconclusive and not well supported with audits. Even then, I note that the plaintiff did not plead this particular claim and thus, they had no basis to adduce evidence to support it. I will equally make no finding on that point.

**3.18** Similarly, counsel for the defendant made submissions supporting the fact that his client's termination was wrongful because it was made pursuant to an illegal resolution (because it was not registered). There was never a counter claim specifically on this point and as such, any submissions on it, were misplaced and cannot be considered.

#### **4.0 What remedies are available to the parties?**

**4.1** Both parties made a claim in special damages. According to the decision in **Uganda Telecom Ltd v Tanzanite Corporation (Civil Appeal No.17 of 2004) [2005] UGSC 9 (23 June 2005)**, this form of damages cannot be recovered unless specifically claimed and proved or unless the best available particulars or details have before trial been communicated to the party

against whom it is claimed. **Again Justice Musota in his decision of Rosemary Nalwadda Vrs Uganda Aids Commissions HCCS NO. 67/2011 held that:-**

*“... A claim for special damages must specifically be pleaded and strictly proved. A plaintiff had the duty to prove their damage. It is not enough to write down particulars, throw them to the Court and say “this is what I have lost I ask you to give me these **damages**”.*

**4.2** The plaintiff made a claim for expected income from the grinding mill in the sum of **UGX 100,000/=** per day, making a total of UGX 77,200,000 at the time the suit was filed. Unfortunately, the evidence adduced did not prove that income. **PW1** stated in his testimony that he did not know who was collecting the money on a daily basis for the mill or whether the mill in fact made any profits at all since the overall income it earned had never been computed. He contradicted himself on the point who had full responsibility of receiving money earned from the mill by stating that it was the treasurer and then changed to state that it was the defendant. On his part, **PW2** stated in his testimony that the opening of the account for the grinding mill was assigned to three people; the secretary, treasurer and the chairman. Further, I have agreed with his counsel that after his termination in October 2007, the defendant had no control over the mill or its revenue. Therefore it follows from those testimonies and my findings that the profits earned and the actual person collecting the mill revenue was uncertain. There would be no basis for me to make an award representing profit earned between 18/10/10 and 30/11/09.

**4.3** The Plaintiff in addition prayed for general damages as loss incurred as a result of the defendant’s actions which threatened their survival as an

organization. General damages are damages which the law implies or presumes naturally to flow or accrue from the wrongful act and may be recovered without proof of any amount. See **Trail v Bowker, (1947) 14 EACA 20 and Patel and Amin (1955) 11 EACA 1 258, cited in East African cases on the law of Tort by Veitchat at page 253.**

**4.4** It is the accepted position that the measurement of quantum of damages is a matter for the discretion of each individual judge which of course has to be exercised judicially with the general conditions prevailing in the country and prior decisions that are relevant to the case in question. See **Moses Ssali a.k.a Bebe Cool & Others Vs A.G and Others HCCS 86/ 2010.** In the case of **Uganda Commercial Bank Vs Deo Kigozi 2002 EA 293** it was held that *“in assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience the party may have been put through and the nature and extent of the breach or injury suffered.”* General damages are those that the law presumes to arise from the direct, natural or probable consequences of the act complained of by the victim. They follow the ordinary course and relate to all other terms of damages whether pecuniary or non pecuniary. See: **Uganda Commercial bank Vs Deo Kigozi 2002 EA 293.**

**4.5** In their submissions, plaintiff’s counsel argued that general damages should be computed according to the defendant’s capricious and high handed conduct in refusing to hand over the plaintiff’s property and mismanagement including planting his own pastors in some of the plaintiff’s Churches. That the plaintiff was denied the use of her motor vehicles in Church projects and some of the defendant’s actions on occasion entailed recourse to police. I agree that such behaviour by the defendant and loss to the plaintiff, would

attract an award in damages but not as high as that claimed. The plaintiff ought to have managed the mill well enough to pay its bills on time and he should have handed over all the plaintiff's property when he accepted his termination, especially when he moved on to start his own Church. The properties he retained were most probably for running the day to day activities of the plaintiff and they must have been inconvenienced by their retention. The electricity bill could have attracted an interest by now. In my view an award of Shs. 10,000,000 in general damages is reasonable in the circumstances.

**4.6** The defendant by his pleadings raised a counter claim of **Shs. 261,500,000** as money spent on construction of Churches and buying property for the plaintiff. In his submissions, his counsel raised a preliminary point of law that the plaintiff did file a reply to the counter claim as required by law. However on perusal of the record I found a reply which was filed on 9/04/2010. It may well be that it was never served which would offend the provisions of the Civil Procedure Rules. Unfortunately, it is too late now for the Court to go into the merits of that reply on the basis of it's not having being served. I will instead take the liberal view of considering it as part of the plaintiff's pleadings. That said, the defendant is still mandated to prove the counter claim on a balance of probabilities.

**4.7** The defendant tendered in **DEX.4** to show the numerous contributions he made to the development of the plaintiff's Churches. By their nature, that claim is for special damages, a category of damages that in most cases requires strict proof.

**4.8** I note that in paragraphs 3b), c), d) and e) of the counterclaim, an effort was made to plead the defendant's claim of special damages. In **DEX.4**, the plaintiff provided tables for payments made towards several Church projects. Each enumerated the project name, the funds contributed by ICM in the USA, those made by the plaintiff, and his own contribution to top up the total project costs. I admit that the tabulation was well done and quite comprehensive. However, no single document was provided to confirm the contributions made by the defendant by date and in what amounts. The defendant did give considerable evidence on this point but his evidence alone would not be satisfactory to earn him an award in special damages especially with regard to such large, diverse amounts. He fell under the category of those witnesses that compute then 'throw' figures at the Court and then expect an award. It is declined.

**4.9** Again in both his pleadings and evidence, the defendant contented that there was a commitment by the plaintiff to make a refund of what he was owed. Firstly, this being a registered company, such a serious commitment should have been in writing preferably by special resolution of those empowered to commit the company in that manner or, some undertaking in writing. The only document available would be the Memorandum of Understanding made between the plaintiff's administrators (the defendant inclusive) on 18/08/2008 (D. Exhibit 3). It was agreed in paragraph 2 at page 2 that, the defendant was to compute all funds he claimed from the Open Bible Standard Churches and present it to her National Executive Advisory Committee for reconciliation, before relaying it to the International office for funding by 9/9/2008. There is no indication that the defendant ever followed that procedure or whether his claim was denied after he had properly followed that procedure. That memorandum of Understanding is considered

a binding contract on those who signed it and the defendant was thereby bound by its terms. See for example **Rashid Moledina Vrs Hoima Ginnors Ltd (1967) EA 645.**

**4.10** Further, there being no evidence that the defendant was authorized or requested to make personal contributions towards the plaintiff's projects, his claims would be considered as gratuitous payments he made, which in law are considered as a gift. The payments were made on his free will, without coercion or due influence, and then received and accepted by the plaintiff. This Court would under such circumstances have no power to order for their refund.

**4.11** Although the defendant claimed general damages nothing was shown in his evidence that he suffered loss as a result of the plaintiff's actions. I have found that there was no breach of the memorandum in which the plaintiff undertook to make a refund, and as such, no claim of such damages can be maintained.

**4.12** In summary, find that the entire claim of the defendant in counterclaim of special and general damages, interest and costs, fails.

**5.0** In conclusion judgment is entered for the Plaintiff against the Defendant for:

- a) An order that the plaintiff is entitled to vacant possession of the grinding mill in Bugiri, which is their property.
- b) An order that the defendant returns to the plaintiff a trimmer machine for cutting paper.

- c) An order that the defendant returns to the plaintiff motor vehicle registration **No.UAE 743F**, and motor cycle Yamaha registration **NO. UAC 505D** and all their official documentation in particular the log/registration books.
- d) An order that the defendant pays to the plaintiff Shs. **UGX3, 315,849** for the outstanding electricity bill in respect of the grinding mill in Bugiri.
- e) The defendant pays to the plaintiff, general damages of **UGX10,000,000/=**.
- f) Interest on (e) above at the rate of 12% from the date of filing of this suit until payment in full.
- g) The counterclaim is dismissed
- h) Since the plaintiffs have only succeeded in part on their main claim, they are awarded one half of the costs of the suit, and the full costs of the counterclaim.

I so order

Signed

**EVA K. LUSWATA**

**JUDGE**

**12/07/2019.**