

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 569 OF 2017

WAKABI DENNIS ZIMBA ::::::::::::::::::::::::::::::::::::::: **PLAINTIFF**

VERSUS

KASIRYE GWANGA ::::::::::::::::::::::::::::::::::::::: **DEFENDANT**

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

1. The Plaintiff brought this suit for a declaratory order, recovery of special, punitive/exemplary and general damages, costs of the suit, interest there under and any relief this court deems fit against the Defendant for unlawfully and maliciously burning the Plaintiff's wheel tractor case 580 super K diesel turbo backhoe loader Registration no. UAY 759T.
2. Briefly the facts are that on 12th August 2017, Mr. Mayindo Dan and one Lubega acting on behalf of Mr. Muwonge Andrew and Mr. Kassim Sserugo presented themselves to the Plaintiff as the registered proprietors of land comprised in Kyadondo Block 269 at Lubowa, Naziba Zone 2, Ndejje division. They hired the Plaintiff's tractor at a cost of Ug. Shs. 500,000 per day to grade their said land, the tractor being operated by the Plaintiff's driver Gideon Ndyamuhaki.
3. The tractor while grading the land run out of fuel and was parked for a refill. However while still parked at the land, the Defendant who mistook the said land to be his, set the said tractor ablaze maliciously and unlawfully. The tractor was damaged beyond repair and as such is no

longer fit for the use it was designed for. The Plaintiff reported the matter to police vide CRB 146/2017 and he holds the Defendant liable for the loss incurred. He therefore brought this suit against him for recovery of the same.

4. After service on the Defendant on many occasions without him filing a written statement of defence or appearing before court and proof of service returned to court, the Plaintiff applied for interlocutory judgment before the Registrar and the same was entered on 21st February 2018 and the suit was set down for formal proof. The Plaintiff was the only witness and he gave oral evidence.
5. Order 9 rule 6 of the Civil Procedure Rules provides that where the plaintiff is drawn claiming a liquidated demand and the defendant fails to file a defence, the court may, subject to rule 5 of this Order, pass judgment for any sum not exceeding the sum claimed in the plaintiff together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs.
6. The Plaintiff as the PW1 testified that he was called by his driver and he arrived and found the tractor still burning. In trying to save the tractor, he asked the women nearby for some water to stop the fire and they all told him that they feared the Defendant would kill them if they assisted. Later he called the police who came and put out the fire. However by this time the tractor was destroyed. He then took pictures of the destroyed tractor and he tendered these as PW1 exhibit 1 in court. He also tendered the police report about the incident as PW1 exhibit 2. He tendered the invoice on which he bought his tractor at 6750 euros as PW1 exhibit 3. In it, the Plaintiff tendered five receipts. One receipt was for shipping charges with Freight Agency Ltd at Ug. Shs. 15,360,000/=, Two were for shipping charges with salabed imports and exports totalling Ug. Shs. 4,199,600/= and two receipts from KK break down services for towing the tractor in issue after it was burnt on 21st October 2017 and 16th August 2017 totalling Ug. Shs. 3, 000, 0000/=.
7. Although the Plaintiff asked for different figures in the pleadings, I am satisfied that the Plaintiff has demonstrated that he incurred the figures listed herein above from the exhibits in

court. I am taking the purchase price in the invoice as the correct purchase price because the description of the tractor is the same as in the invoice and the tractor was present in Uganda.

8. The level and manner of destruction of the Plaintiff's tractor by the Defendant was with absolute high handedness and total disregard of the law and the Defendant's failure to appear in court even after being served severally. Moreover, the nature of destruction by burning of the Plaintiff's tractor was malicious. This is a proper case for punitive damages. I will therefore award punitive damages for the Defendant to learn the illegal nature of his actions and to reign him in not to do the same in future and to deter similar violators.
9. I am convinced by the evidence of the Plaintiff above and judgment for him is entered in the following terms:
 - i. The Defendant maliciously and unlawfully burnt down the Plaintiff's tractor in issue.
 - ii. Special damages of Euros 6750 as purchase price of the tractor, Ug. Shs. 19,559,600/= as shipping charges and Ug. Shs. 3,000,000/= as towing charges.
 - iii. General damages of 50,000,000 (Uganda Shillings Fifty Million) for the inconvenience and suffering caused to the Plaintiff.
 - iv. Punitive damages of 30,000,000 (Uganda Shillings Thirty Million).
 - v. Interest of 8% on (ii) above from the date of the incident that is 12th August 2017 till payment in full.
 - vi. Costs are also awarded to the Plaintiff.

I so order

Lydia Mugambe
Judge
7th December 2018