

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASINDI  
CIVIL SUIT NO. 0026 OF 2017**

1. NYANJURA MARION  
2. BOMERA JOSEPH ..... PLAINTIFFS

**VERSUS**

1. EMMANUEL GITTA }  
2. MUGISA WILLIAM } ..... DEFENDANTS  
3. KAAHWA AAMINA }

**JUDGMENT BY HON. JUSTICE GADENYA PAUL WOLIMBWA.**

The plaintiff sued the defendant for general damages of UGX. 500,000,000/=, exemplary damages and costs of the suit. It was the plaintiffs' case that on 04/10/2016, the defendants assaulted, battered and injurious wounded grievously injured. The defendants cut the first plaintiff's leg with a panga, cut her hand and hit her body indiscriminately with an iron bar with an intention of taking her life. As a result of that assault the 1<sup>st</sup> plaintiff now has sparingly scarred body, lame figure, a disabled leg and cannot walk without support due to the viciousness and brutality she lost everything that she had a shop worth 4 million which collapsed she sold her goats and pigs. In the written statement of defense, the defendant denied that they never assaulted the first plaintiff that she was injured in the process of a fight as was found by the trial magistrate in the criminal matter. The defendant prayed that the suit be dismissed with costs to the defendant.

In her witness statement, the plaintiff stated that on the 4<sup>th</sup> day of October at about 10:00am while in her banana garden together with her sibling the 2<sup>nd</sup> plaintiff, they were savagely, fiercely and violently attacked by the defendants and grievously. That the first Defendant using an iron bar viciously hit her hand and crashed her right figure. That the second defendant using a panga cut her left leg grievously damaging all her tissues and borne. The third defendant using an iron bar variously hit her on different parts of her body with an intention of ensuring she dies in the process

of the attack. That the defendant's intention was assault and kill them (plaintiffs). That he sustained serious injuries with a sparingly scarred body, lame fingers and a disabled leg and cannot walk without support due to viciousness and brutality of the attack.

That the defendants particularly the third defendant using an iron bar hit the second plaintiff indiscriminately and he sustained serious injuries on his body. That the defendants in their written statement of defense did not dispute the fact that they injured them and only alleged that they acted out of provocation and self-defense.

The defendant in their witness statement admitted having caused assaulted and caused injuries to the plaintiffs. However referring to the judgement of the lower court, they were ordered to pay fine and compensate the plaintiff which money was paid to the plaintiff and contributed towards her treatment money worth UGX. 1.860.000/= . That it is unrealistic for the plaintiff to come to this court claiming for another compensation in respect of the same matter without justifiable claim.

This being a civil suit, the burden of proof lies with the plaintiffs who must prove their case on a balance of probabilities. See **Lancaster v. Blackwell Colliery Co. Ltd 1918 WC Rep 345** and **Sebuliba v. Cooperative Bank Ltd [1982] HCB 130**).

Both counsel had oral argument and during scheduling two issues were framed for court's determination

1. Whether the defendants caused personal injuries to the plaintiff
2. What remedies are available to the parties?

**Issue1: Whether the defendants caused personal injuries to the plaintiffs.**

In his submission counsel for the plaintiff, relying on the **HCCS at Gulu Appeal No. 45 of 2018** submitted that the aspect that because there was compensation in a criminal case you cannot file a civil suit to recover compensation. Further relying on the case of **Odiya Richard vs. Okello John Bosco and three others**, the learned Judge considered a claim for damages for assault occasioning actual bodily harm even after an order is entered for compensation by a criminal court that such a claim is valid and properly before court.

Counsel submitted that the fact that there was an order for compensation by the lower court, it would not lie for the defendants to say that the plaintiffs cannot seek compensation in this court.

Counsel further submitted that the plaintiff Nyanjura Marion prayed for UGX. 500,000,000/= being general damages for the pain she underwent because of cutting her leg with a panga, hitting her body and causing her personal injury. That she bled, she was hospitalized for 4 days and she is disabled up to now she walks with an aid of artificial support. Counsel referred to the case of **Omyi Rogers vs. Attorney General & another Civil Suit No. 27 of 2002**. That it was a claim to recover general damages caused by a gunshot wound, the learned judge considered the fact that there was a fracture on the upper thigh of the right tibia and soft tissue damage, which resulted into bleeding and pain. He awarded general damages of UGX. 2,000,000/= that the officer who shot only stopped at shooting and there was no aggravating factor. Counsel argued that in the instant case, the motive for the fight was conflict over the land and the defendants used violence and force to gain advantage over the plaintiff that, that is an aggravating factor and prayed for an award of 50,000,000/=

Counsel concluded relying on the case of **Wekesa John Patrick vs. Attorney General, Civil Suit No. 130 of 2008**. That in that the plaintiff was attacked while he had visited the status in quo, and as a result of being cut like in the instant case his finger was injured and awarded UGX 120,000,000/= was awarded as general damages with interest. Counsel wound up by praying that the nature and extent of damages suffered by the plaintiff in this matter was gross and left a permanent effect on the plaintiffs' lives. Counsel prayed that the plaintiffs be awarded both general and exemplary damages of UGX. 500,000,000/= and UGX. 50,000,000/= respectively.

In reply counsel for the defendant submitted that the authorities relied on by counsel for the plaintiffs are not relevant in as far as this matter is concerned reason being they applied where there was no any compensation but in the instant case there was compensation in the trial court and the issue for court's determination would be whether the compensation was adequate and this question would have been raised to this court by an appeal on compensation of the lower decision. That the compensation, which was ordered in the lower court, was adequate and the plaintiff received their compensation through court which evidence is on court record.



In rejoinder, counsel argued that, he does not agree with any of the two. That the authorities provided only relate to matters where there was no judicial compensation. Counsel referred to his first case where there was criminal proceedings and compensation ordered and it was held that even where there are such proceedings, a party is at liberty to file a claim seeking more adequate compensation like in the instant case. That it is not only illogical but also bad for the remedy of the plaintiff who a complainant in the lower court was made in an appeal against the criminal judgement for enhance compensation. Counsel reiterated his earlier prayers.

At scheduling conference, the parties agreed on the facts that on the 4<sup>th</sup> of October 2016, at about 10:00am the plaintiffs while at Nyamiti Village, Nyamiti Parish, Muhooro Sub County Buyaga West County Kagadi District sustained injuries and that the plaintiffs pursued the defendants criminally vide criminal case No. 402 of 2016 on account of causing grievous harm and assault occasioning actual bodily harm contrary to section 219 and 236 of the penal code Act cap 120 and they were convicted.

In the instant case, the statement of the first plaintiff is unchallenged, the defendants admitted that there was a fight because of a land dispute between their families, which led to criminal charges of assault where they were tried and convicted. They were ordered to pay fine and compensate the plaintiff, which they did. The defendants admitted that they assaulted the plaintiffs but their contention is paying compensation twice in the same matter. One event can give rise to both criminal and tortious liability.

Assault and battery are intentional torts, and thus can serve as the basis for a civil suit demanding compensation in the form of monetary damages. At the same time assault and battery are also crimes, under the Penal Code Act, implying that they can also result in prosecution by the state and, if the accused is found guilty, can result in a term of imprisonment or a fine or both. In the judgment of the lower court, in the criminal trial where the defendants were the accused, it is stated that each was sentenced to a fine of UGX. 200,000/= or 18 months imprisonment and compensation of each UGX. 350,000/= and UGX. 150,000/= for the third defendant for the minor injuries she had caused.

In the same judgement, the defendants had paid advance some money worth UGX. 1,860,000/= being money for treatment which was denied by the plaintiff and the defendants did not proved to court by any means that they had paid the money they claim to have contributed for treatment. I find that there was an order for compensation which the defendants complied with the plaintiff but she has proved on the balance of probabilities that she is entitled to adequate compensation having been assaulted and battered by the defendants to an extent losing her left leg making her permanently disabled. There is no absolute explanation as to why the defendants had to assault the plaintiff in such a cruel manner if they had a land despite and an order was issued to maintain the status quo as they claim, they would have sought refuge in the courts of law than attacking the plaintiff in such a way. I therefore answer the first issue in affirmative.

**Issue 2: What remedies are available to the parties?**

By his plaint, the plaintiff sought the following reliefs; general damages, exemplary damages, interest and costs of the suit.

Damages are said to be “at large”, that is to say the Court, considering all the relevant circumstances, will reach an intuitive assessment of the loss, which it considers the plaintiff has sustained. The award of general damages is in the discretion of court in respect of what the law presumes to be the natural and probable consequence of the defendant’s act or omission (see **James Fredrick Nsubuga v. Attorney General, H.C.C.S No. 13 of 1993 and Erukana Kuwe v. Isaac Patrick Matovu and another, H.C. Civil Suit No. 177 of 2003**).

In **Alaka and Company Advocates v. Metropolitan Properties Ltd, H. C. Civil Suit No. 621 of 2007**, a law firm sued its landlord for the wrongful impounding of its business assets in a misconceived distress for rent, as a result of the plaintiff’s failure to give the defendant a three months’ notice before terminating their tenancy with the defendant. The property impounded included chairs, desks, law books, computers, important documents such as court files, wills and even their professional attire, which property was retained as security for the payment of a sum of Shs. 6,729,000/= in lieu of the notice to terminate the tenancy. As general damages for the ninety days for which the items were wrongfully impounded, by a judgment delivered on 24<sup>th</sup> April 2012

the court awarded the plaintiff shs. 60,000,000/= as general damages to atone for such a prolonged disruption, professional embarrassment, humiliation and general inconveniences.

In **Power and City Contractors Ltd v. LTL Projects (PVT) Ltd**, H.C. Civil Suit No. 24 of 2012, in a judgment delivered on 11<sup>th</sup> September 2015, the court awarded shs. 80,000,000/= as general damages for the wrongful seizure and detention of a Pajero Station Wagon, a self-loader lorry, a Tipper and a compressor belonging to the plaintiff. The defendant had directed the police to detain the plaintiff's property resulting in a six months' long, wrongful detention of the chattels.

In **Omonyi Rogers vs. Attorney General and Uganda Revenue Authority** HCCS 27 of 2002, the court observed that:

“In the assessment of general damages, the court should be mainly guided by the nature and extent of the injury suffered (See *Uganda Commercial Bank v. Kigozi [2002] 1 EA 305*). Furthermore, a plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong (See *Hadley v. Baxendale (1894) 9 Exch 341*; *Charles Acire v. M. Engola, H. C. Civil Suit No. 143 of 1993* and *Kibimba Rice Ltd v. Umar Salim, S. C. Civil Appeal No. 17 of 1992*). General damages are the direct natural or probable consequence of the wrongful act complained of and include damages for pain, suffering, inconvenience and anticipated future loss (see *Storms v. Hutchinson [1905] AC 515*; *Kabona Brothers Agencies v. Uganda Metal Products & Enamelling Co. Ltd [1981-1982] HCB 74* and *Kiwanuka Godfrey T/a Tasumi Auto Spares and Class mart v. Arua District Local Government H. C. Civil Suit No. 186 of 2006*). All this is subject to the duty to mitigate. At common law, the plaintiff had a duty to take all reasonable steps to mitigate the loss sustained (see *African Highland Produce Ltd v. Kisorio [2001] 1 EA 1*”).

In the instant case, the plaintiff suffers a fracture of the upper third of the tibia, lost of a lot blood, experienced excruciating pain, underwent surgery and now suffers a reduced flexibility of the right knee since he can only kneel with one knee. Although the evidence establishes that he suffered a lot of pain for a prolonged period of time, the degree of permanent incapacity he suffered as a



result of the injury was never assessed. The court therefore is not in position to make an assessment of the permanent damage he suffered based on any prognosis as to his chances of healing in the future. The assessment will more or less be based on the pain and suffering he experienced.

**In Nansubuga Josephine v. Vision For Africa, H. C. Civil Suit No. 969 of 2005**, a decision delivered on 5<sup>th</sup> February, 2009, the plaintiff suffered injuries as a result of a road traffic accident caused by the defendant's vehicle, which included; fracture of neck of the left femur, fracture of the right acetabulum, fracture of the interior right pubic, fracture of the left tibia plateau, comminuted fracture of the distal third of the right tibia and fracture of the medial malleolus, multiple fractures with the hemorrhagic shock, fracture of rectal femur, right fracture, dislocating right 1st metatarsal- phalanges joint and post traumatic avascular necroses of left femoral head and post traumatic osteoarthritis of the right hip joint. Her injuries were classified as maim, and her permanent disability was fixed at 80%. She was awarded shs. 35,000,000/= as general damages.

In comparison, the plaintiff in the instant case suffered less than a third of the injuries the victim in that case suffered. Taking into account the inflationary tendencies that has inevitably affected this claim, I will accordingly award the plaintiff shs. 12,000,000/= in general damages.

The above decision is more appropriate to the case at hand, where the first plaintiff suffered injuries on her leg that have left her with a permanent disability in form of a limp in her leg. The first plaintiff, who used to walk normally, cannot do so any more without the aid of a crutch. What is however, unfortunate, is that the extent of the plaintiff's disability was not assessed and it is therefore difficult to calculate the damages using this parameter. Damages for the 1<sup>st</sup> plaintiff will therefore be assessed based on the pain, anguish, discomfort and loss of mobility in the leg as a result of the defendants actions. I consider a sum of ten million shillings as adequate compensation to the first plaintiff.

With regard to the second plaintiff, the defendants subjected her to assault. Her injuries at best can be described as actual bodily harm and were not as serious as those suffered by the first plaintiff

were that were classified as grievous harm. I consider a sum of two million shillings as adequate compensation and I therefore award the second plaintiff general damages of two million shillings. I note that the defendants were directed and ordered to pay compensation of UGX 1,050,000 to the first plaintiff and UGX 150,000 to the second plaintiff. This compensation will be deducted from the general damages awarded to the plaintiff. In the result, the first plaintiff is awarded net general damages of UGX 8,950,000 and the second plaintiff is awarded net general damages of UGX 1,850,000. The general damages shall attract interest of 8% p.a from the date of judgment until payment in full. Before, taking leave of this matter, the defendants claimed to have given the plaintiff slightly over one million shillings for medical treatment, while they were in prison. The first plaintiff denied ever receiving this money. I was therefore, left with the word of the defendants against the plaintiffs. In the absence of the evidence of the person who gave the plaintiffs money, since the defendants were in prison, I cannot safely assume that the defendants paid this money to the plaintiffs.

With regard to special damages, the plaintiffs never led evidence to prove them. I am therefore unable to award them special damages.

With regard to the claim for exemplary damages, this represents a sum of money of a penal nature in addition to the compensatory damages given for pecuniary loss and mental suffering. They are deterrent in nature and aimed at curbing the repeat of the offending act. In *Omonyi Rogers vs. Attorney General and Uganda Revenue Authority HCCS 27 of 2002*, Justice Mubiru held that:

**“Exemplary damages should only be awarded in two categories of cases; - cases in which the wrong complained of was an oppressive, arbitrary or unconstitutional action by a servant of the government, or cases in which the defendant’s conduct has been calculated by him to make a profit for himself which may well exceed the compensation made to the defendant (see *Kanji Naran Patel v. Noor Essa and another [1965] 1 EA 484*). There are no aggravating factors in this suit that either pleaded or proved”.**

Justice Mubiru rejected the claim for exemplary damages in this matter because:



**“The evidence of the plaintiff does not show that the defendant engaged in any oppressive or arbitrary acts, beyond the mere fact of shooting. I find that the shooting although negligent, was not accompanied by circumstances of aggravation. The claim for exemplary damages is thus rejected”.**

In the instant case, while there is evidence that the plaintiffs were attacked and injured by the defendants in an affray , there is no other evidence that the defendants engaged in other high handed , arbitrary and cruel acts beyond which the court exemplary damages on top of general damages that I consider adequate to compensate the plaintiffs. The claim for exemplary damages is accordingly rejected.

As regards costs, section 27 (2) of the Civil Procedure Act, costs of any action, cause or matter follow the event unless Court for good cause orders otherwise. The Plaintiffs being the successful party in this case are therefore entitled to costs of the suit and they are allowed.

#### **Decision**

Judgment is entered in favour of the plaintiffs in the following terms:

- a) The first plaintiff is awarded general damages of UGX 8,950,000
- b) The second plaintiff is awarded general damage of UGX 1,850,000
- c) The general damages shall attract interest of 8% p.a from the date of judgment until payment in full.
- d) The plaintiffs are awarded costs of the suit.
- e) The defendants will satisfy the judgment severally and jointly.



Gadenya Paul Wolimbwa

**JUDGE**

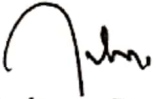
17<sup>th</sup> July 2020.

Only the plaintiffs are present

Enid court clerk

**Court:**

Judgment read in open court.



Gadenya Paul Wolimbwa

**JUDGE**

17<sup>th</sup> July 2020.