



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
LAND CIVIL SUIT NO. 047 OF 2019]

MANJA ALI PLAINTIFF

VS

1. KIZITO RASHID DEFENDANTS
2. MUGULA NASIBU
3. LWANGA HASSAN

*Before: His Worship Kyembe Karim ESQ
Magistrate G.I*

JUDGMENT

Introduction.

Contrary to the common practice where a falsely accused person sues for malicious/wrongful prosecution, this case involves the plaintiff who was the complainant in a successful criminal prosecution against the defendants who have since been convicted and sentenced to a fine for charges relating to criminal trespass and threatening violence vide criminal case no.223 of 2016. The defendants herein filed a criminal appeal no. 20 of 2018 and the same has since been dismissed under the hand of **Hon. Justice Godfrey Namundi** on the 2nd June, 2022 for want of prosecution.



While, evidently, satisfied with the convictions, the plaintiff is manifestly aggrieved with the fact that he suffered cost in securing the said convictions, of which, he now seeks to recover the aforesaid costs incurred as special damages, general damages and costs of this suit.

Plaintiff's case.

It's the plaintiff's case that on the 5th January, 2016, the defendants severally and jointly intended to annoy the person of the plaintiff whereupon they (defendants) trespassed upon the plaintiff's land, threatened him with violence with implements like pangas and sticks. That when the plaintiff reported the matters to police, the defendants were charged, tried and convicted of criminal trespass and threatening violence whereupon, they were sentenced to a fine. While satisfied with the convictions, the plaintiff is aggrieved with the costs he incurred in the process of securing the said convictions, of which, he now seeks to recover the same as special damages, general damages and costs of this suit.

Defendant's case:

I have perused the entire record and I haven't seen any written statement of defence. The defendants however made appearance and also called witnesses to oppose the claim. I'm aware of recent jurisprudence to the effect that a defendant in a magistrates' court case is not under compulsion to file a Written statement of defence. Nonetheless, gathering from the facts that arose at trial, the defendants denied the entire claim. While admitting that indeed they were convicted and sentenced to a fine



of which they paid and also appealed to the High Court, they deny ever damaging any property belonging to the plaintiff and also deny being liable for the costs incurred by the plaintiff in pursuing the criminal case.

Representation:

The plaintiff was represented by M/S LUCHIVYA & CO. ADVOCATES while the defendants were represented by M/S SPENCER ASSOCIATED ADVOCATES.

Recusal:

Initially, immediately after scheduling, by letter dated 13th December, 2024, the 3rd defendant sought orders from the learned chief Magistrate to re-allocate this case from my predecessor Learned Magistrate Grade one. She obliged and recused herself and the file was thus allocated to this court which commenced hearing on the 4th February, 2025. I have looked at the entire record and I have versed myself well with the full facts of the case and the patterns of the proceedings.

Framed issues:

Learned counsel for the respective parties addressed court on two issues:

1. Whether the plaint discloses a cause of action?
2. What remedies available?



Plaintiffs' Submissions:

Learned counsel for the plaintiffs first pointed out for court that the burden of proof in civil cases lies upon the plaintiff as per the provisions under **Section 100 and 101 of the Evidence Act**. Learned counsel further cited for court the cases of **Proline Soccer academy Ltd VS MTN Uganda Limited, M/S Saath & Saath & FUFA (U) LTD civil suit no. 317 of 2011** for the proposition that the plaintiff bears the persuasive burden to prove to court why the defendant should be held liable.

On issue 1, learned counsel for the plaintiff cited for court the case of **Luyima peter & others vs Rose Kwagala & anor (civil suit no. 29 of 2019)[2025] UGHC 1301 (12 November 2025)** for the proposition that a cause of action is a bundle of facts, which, if traversed, it would be necessary for the plaintiff to prove in order to support their right to judgment in the court. Learned counsel also set down for court the test as laid out in the case of **Auto Garage VS Motokov (1971) EA** whereof it was held that for a plaintiff to disclose a cause of action, it must show that:

- a) The plaintiff enjoyed a right
- b) The right was violated
- c) It is the defendant liable for the violation.

Learned counsel implored court to take judicial notice of the Judgment in criminal case no. 223 of 2016 whereof, the defendants were indeed convicted of criminal trespass and threatening violence and submitted that the plaintiff had a right to enjoy his peace and home and that the



defendants violated this right and the criminal court already pronounced them liable.

On issue 2 regarding the remedies sought, learned counsel for the plaintiff pointed out testimony of Pw1 on cross-examination whereof he confirmed having incurred costs facilitating the prosecution of the criminal case, including transporting witnesses, feeding them, service of summons etc. For this, he pointed out the defence testimony of Dw1 who admitted that the plaintiffs witnesses were present whenever court convened and the testimony of Dw2 to the effect that the fine paid by the defendants was paid to the government and not the plaintiff and that the state prosecutors did not move themselves but were prompted and facilitated by the plaintiff who was the complainant.

Regarding the allegedly damaged house, learned counsel for the plaintiff pointed out for court the testimony of PW2 who told court that the house developed a major crack, between the window and door extending down into the foundation, which altogether necessitated dismantling of the entire front part and having to rebuild the same.

Learned counsel for the plaintiff implored court to find that it is not a disputed fact that the defendants were prosecuted and convicted. And had it not been for the acts of the defendants, the plaintiff would not have suffered cost and loss. Learned counsel cited for court the case of **Uganda Motors Ltd Vs Attorney General (Civil Appeal no. 5 of 2021)(2025) UGSC 28 (18 July 2025)** whereof **Hon. Justice**



Bamugemereire JSC noted at page 32 of her Judgment the “*but-for test*”

Defendants’ Submissions

In reply, learned counsel for the defendants, while agreeing with the legal position regarding the burden of proof, he disagreed that the suit discloses a cause of action. He cited for court the decision in **Tororo Cement Co. Ltd Vs Frokina International ltd, Civil Appeal no. 2 of 2001** for similar propositions as to what amounts to a valid cause of action as discussed in **Auto garage, supra**.

Learned counsel first assailed the issue and relief for a damaged house. In his view, it was introduced in evidence and final submissions but it is not supported by any pleading. He cited **Order 6 rule 7 CPR** for the proposition that any new ground of claim ought to be introduced by way of amendment of pleadings and further cited **Mugisha Amos VS Muwanga Sekaka Civil suit no. 3 of 2018** for the proposition that parties should not depart from their pleadings.

Regarding the alleged expense in procuring the prosecution and subsequent conviction of the defendants, learned counsel submitted that the said expenses were not only unnecessary but also illegal and it was done by the plaintiff out of his own choice but was not a mandatory requirement. For those reasons, it is learned counsel’s submission that the plaint does not show any right of the defendant that was breached.



As regards issue 2 in respect of remedies available to the parties, learned counsel cited for court the decision in **Hall Brothers SS Co. Ltd VS Youngs [1939]1 KB 748, at 756 (CA)** for the definition of “damages” to mean:

“...sums which fall to be paid by reason of some breach of duty or obligation, whether that duty or obligation is imposed by contract, by general law Or legislation...”

Learned counsel for the defendant reproduced the special damages as pleaded in the plaint and submitted opposing the claim for special and general damages on grounds that; the plaintiff failed to specifically plead special damages; that the plaintiff failed to specifically prove special damages; that the plaintiff’s alleged expenditure could not be visited on the defendants and finally, that the plaintiff’s evidence is full of contradictions.

Regarding alleged failure to plead special damages, learned counsel for the defendant cited for court the case of **Giza systems (U) Ltd vs Central Electricals international Ltd civil suit no. 531 of 2024** whereof, citing with approval the case of **W.M Kyambadde Vs Mpigi District Administration (1983) HCB 44** it was stated that:

“...special damages must be specifically pleaded and strictly proved...”



Learned counsel further cited **Order 6 rule 1 CPR** for the proposition that “...every pleading shall contain a brief statement of the material facts...” and that “...pleadings shall be divided into paragraphs...” and **Order 7 Rule 1(e) CPR** to the effect that “...the plaint shall contain facts constituting the cause of action...” and, in his view, that the plaintiff did not give the full particulars of the claimed special damages since, the plaintiff omitted to show what was transported, did not show the actual dates, did not show from which point the alleged transportation commenced, the reason for transportation, did not give the unit price of breakfast or lunch, did not give a breakdown of how much was spent each day, did not show whether he spent the alleged 2,000,000/= but instead indicated the value of the house, *inter alia*.

Learned counsel further assailed items a,b,c,d &f of the particulars of special damages submitting that the same were not supported with receipts and he disagreed with the authority cited by the plaintiff, that is, **Najjemba Rose & Anor Vs Agufibo Hassan & Mandella Millers Uganda Ltd (HCT-14-CV-CS-0075-2021)** for the proposition that strict proof doesn't necessarily mean documentary evidence. Learned counsel sought to substantiate it, submitting that it was a case regarding death as a cause of action and in his view, **Section 70 of the Law reform (Miscellaneous provisions) Act** allowed funeral expenses to be awarded to the beneficiaries of the estate of the deceased, taking judicial notice that where death has occurred, burial must happen and expenses inevitably incurred unlike in the instant case where, in his view, the plaintiff did not produce any evidence to support his claim, there was



nothing to take judicial notice of and that there is no legal requirement for a complainant to inject money into prosecution of a criminal case and even then, the plaintiff also failed to adduce the record of proceedings to prove who attended court and who did not.

Learned counsel also assailed the pictorial evidence of the house, submitting that it is suspicious that indeed the was damaged in 2016 but only renovated in 2024 and photos thereof taken for court evidence. Learned counsel wondered why the pictures of the damaged house were not taken.

Learned counsel also cited for court constitutional provisions to the effect that it is the director of public prosecutions charged with duty to institute and pursue criminal cases and that the plaintiff's role as a complainant was only limited to that of a witness, not to invest money. Learned counsel further cited for court **Section 2(b) of the Anti-corruption Act** to support his submission that the plaintiff's act of transporting public servants was illegal, since in his view, this amounted to a "compromise."

He concluded by imploring this court to dismiss the suit with costs in accordance with the provisions under **Section 27 of the Civil Procedure Act, cap 282.**



Consideration by court:

Issue 1: whether the plaint discloses a cause of action?

Article 27 of the Constitution of the Republic of Uganda, 1995 provides:

Right to privacy of person, home and other property.

(1) No person shall be subjected to—

- a. unlawful search of the person, home or other property of that person; or*
- b. unlawful entry by others of the premises of that person.*

(2) No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

The plaintiff pleaded in plaint facts to the effect that:

“...on the 5th January, 2016, the defendants severally and jointly intended to annoy the person of the plaintiff whereupon they (defendants) trespassed upon the plaintiff's land, threatened him with violence with implements like pangas and sticks...”

“...the plaintiff reported the matters to police, the defendants were charged, tried and convicted of criminal trespass and threatening violence whereupon, they were sentenced to a fine...”

Black's Law Dictionary, 9th Edition also cited with approval in the cases of **Marko Matovu & 2 others vs Muhammed Sseviri & 2 others, SC Civil Appeal no. 7 of 1978** define ownership of property as that *“...possession can sometimes be used as an indicator of ownership...”*



From the facts as pleaded above, clearly the plaintiff owned/owns or was in occupation of property, of which he is entitled to privacy thereof as per the constitutional provision above cited. – THE RIGHT.

The pleaded facts also state that the defendants have since been convicted of criminal trespass and threatening violence against the plaintiff at his said home.- THE VIOLATION.

This court has taken judicial notice of a dismissal order in criminal appeal no. 20 of 2018 under the hand of **Hon. Justice Godfrey Namundi** on the 2nd June, 2022 for want of prosecution. This was the appeal instituted by the defendants herein and this court is not privy to any further appeal as regards the aforesaid conviction. It follows therefore that the defendants have already been pronounced liable **(beyond reasonable doubts)** for the violation of the plaintiffs right above stated. –THE LIABILITY OF THE DEFENDANTS.

I note that learned counsel for the defendants submitted that since the defendants were sentenced to a fine of UGX 300,000/=, of which they paid, they are absolved from further liability.

I respectfully disagree. The criminal case is distinct from the civil case, in so far as the remedies sought are different and each can only be pursued through its own procedure. The criminal case sought to punish the defendants for the criminal wrongdoing. That was accomplished by imposition of a fine which was paid to the state of Uganda.



The instant civil suit seeks to enforce private civil rights that were violated in the course of commission of the criminal acts.

For contextual purposes I will give a common example;

A reckless driver who causes an accident can be issued an instant ticket by the traffic police of about UGX.200,000/=. But that does not take away the liability of the damaged vehicle of the other road user of which he occasioned dents upon. That other road user can sustain a cause of action against such a driver in negligence and recovery of repair costs.

For those reasons, this court is satisfied that the plaint discloses a cause of action against the defendants. **Issue 1** is answered in the AFFIRMATIVE.

Issue 2: What remedies are available to the parties?

Both parties agree as regards the standard and burden of proof in civil cases as provided under **Sections 101,102 & 103 of the Evidence Act cap 8**. In the case of **Wangala Philip Vs Steel and Tube industries Ltd HCCS no. 212 of 2018, Hon. Justice Boniface Wamala** re-confirmed that the burden of proof in civil cases lies on the plaintiff/claimant and that the standard is that on a balance of probabilities.

Like I mentioned from the outset, I did not see any written statement of defence filed by the defendants. The only pleading before court is the amended plaint filed by the plaintiff. I'm aware that defendants in a



Magistrate's court trial are not under compulsion to file a written statement of defence.

Order 6 rule 27 (1) CPR provides:

Suits in a magistrate's court may be instituted by lodging a plaint and may be tried without further pleadings unless the court otherwise orders.

Of course, while it is not prohibited, a defendant who elects to proceed to trial without pleadings does so at his own peril. Mindful that **Order 6 rule 8** requires every denial to be specific. It provides:

Denial to be specific.

It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally the grounds alleged in a defence by way of counterclaim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages. [UNDERLINING ADDED FOR EMPHASIS].

My interpretation of that provision is that, while defendants are duty bound to specifically deny facts they dispute, the plaintiff still remains duty bound to prove his claimed damages, even though, the same were not specifically denied by the defendants.



In that case therefore, the question before court in answering this issue is whether or not the plaintiff proved his claimed damages to the required standard.

Under **Section 2** of the Evidence Act Cap 8

“Evidence” denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes testimonies by accused persons, admissions, judicial notice, presumptions of law and ocular observation by the court in its judicial capacity. [UNDERLINING ADDED FOR EMPHASIS]

Section 58 of the Evidence Act, cap 8 provides that a fact in issue can be proved by direct oral testimony, save for the contents of a document.

The question of damages which is currently before this hon. court is no doubt, a fact in issue and can indeed be proven through direct oral testimony.

Learned counsel for the defendant assailed items a,b,c,d & f of the particulars of special damages in the plaint, submitting that the same were not supported with receipts and he disagreed with the authority cited by the plaintiff, that is **Najjemba Rose & Anor Vs Agufibo Hassan & Mandella Millers Uganda Ltd (HCT-14-CV-CS-0075-2021)** for the proposition that strict proof doesn't necessarily mean documentary evidence.



I have addressed my mind to the learned counsel for the defendant's attempt at distinguishing the said case from the instant facts and I must admit, I'm impressed with his brilliance. But I respectfully disagree with him.

While it's true that the cause of action therein was wrongful death, and it is also true that the **Law reform (Miscellaneous provisions) Act** allowed funeral expenses to be awarded to the beneficiaries of the estate of the deceased, it is additionally true that the Hon. Judge also held that strict proof does not necessarily mean documentary evidence, as rightly submitted by the learned counsel for the plaintiff.

Similar holding was expounded in ***Haji Asuman Mutekanga -Vs- Equator Growers (U) Ltd, S.C. Civil Appeal No.7 of 1995.*** It was stated that:

"...it is trite law that strict proof does not necessarily always require documentary evidence. Oral testimony is good evidence to prove a fact in issue..."

The question therefore before court is whether or not the oral testimony of the plaintiff's witnesses suffices in proving the alleged damages or if that testimony was discredited in cross-examination or with rebuttal evidence. Certainly, the burden of proof lies upon the defendant to discredit the evidence or adduce rebuttal evidence.

I am alive to the principle expounded in ***Kabale District Local Government Council vs Musinguzi (2006) 2 EA at 131*** whereof it was



stated that a party presenting unchallenged evidence has no duty to prove it further. Same reasoning was adopted in **Uganda Commercial bank ltd vs Yakub (2013) UGCOMMC 153**.

I have read the plaintiff's witness statement of **Manja Ali** which was admitted as **Pw1** without objection from the defendants. I also listened to his testimony on cross-examination. I note that in paragraph 7 of his witness statement, he listed the costs he incurred totaling UGX. 9,040,000/=. The only discredited evidence is in paragraph 6 whereof Pw1 told court that he did not transport the prosecutors. However in the itemized special damages in paragraph 7, no such cost is claimed. Save for eliciting testimony to the effect that Pw1 did not have receipts for the costs allegedly incurred the rest of the itemized costs were not discredited/challenged.

As regards special damages item 4(e) in the amended plaint regarding UGX. 2,000,000/=: the cost of renovation of the damaged house, the plaintiff called **Pw2- Hauba Musa Manje** who exhibited **PEX4** –Bill of quantities and **PEX5**- the pictures of the now renovated house.

On cross-examination, the witness' demeanor left a lot to be desired. He generally appeared untruthful and his oral testimony is altogether rejected, save for the documentary exhibits he tendered without objection from the defendants.



Like I mentioned from the outset, **Section 2 of the Evidence Act cap 8** provides what amounts to evidence and it is not limited to one mode. I reproduce it hereunder for emphasis.

Section 2 of the Evidence Act Cap 8

“Evidence” denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes testimonies by accused persons, admissions, judicial notice, presumptions of law and ocular observation by the court in its judicial capacity.[UNDERLINING ADDED FOR EMPHASIS]

While it is true that a complainant is not duty bound to facilitate a criminal prosecution, this court takes judicial notice of the practice that it is the complainant who moves the state machinery to execute their mandate. It is the complainant that moves the witnesses to appear in court, even in absence of witness summons. It is not unreasonable that such a complainant would buy lunch and facilitate transportation of witnesses to effectively support the state in prosecution of his complaint. To discourage such practice and devotion from complainants would have the net effect of encouraging concealment of crime.

Learned counsel for the plaintiff implored court to find that it is not a disputed fact that the defendants were prosecuted and convicted. And had it not been for the acts of the defendants, the plaintiff would not have suffered cost and loss. Learned counsel cited for court the case of **Uganda Motors Ltd Vs Attorney General (Civil Appeal no. 5 of**



2021)(2025) UGSC 28 (18 July 2025) whereof **Hon. Justice Bamugemereire JSC** noted at page 32 of her Judgment that:

“the but for test is a legal standard used in the law of tort to determine if a defendant’s actions caused an injury to a plaintiff. The matter the but-for test inquires into is , but for the existence of X, would Y have occurred?” In other words, would the harm have occurred if the defendant had not acted in the way they did? The test is applied to establish a factual link between the conduct of the defendant and the injury suffered by the claimant.”

Not only do I agree with the proposition in that case but I am also bound by the same as a precedent.

In sum total, this court agrees with the plaintiff that; had it not been for the criminal acts of the defendants of which they have also been convicted of, the plaintiff would not have suffered cost and loss and the defendants are accordingly held liable for the special damages suffered by the plaintiff. The same are duly granted to the plaintiff as pleaded and duly proved through evidence as analyzed here-above.

Regarding general damages, the power to award damages by the trial court is exercised in the circumstances of a judicious estimation of the loss to the victim once the breach of duty or injury has been established.

The principle of assessment of damages generally is ***restitutio in integrum***;



A handwritten signature in black ink, appearing to be 'KAD'.

The basic measure of damage is restitution as per the holding in **Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21.**

The essence of damages is compensatory. It is neither to punish the defendant nor confer a windfall on the plaintiff. It is not also meant to punish the claimant and allow the defendant to go without repairing the actual loss caused to the claimant as per the holding in **Lydia Mugambe v Kayita James & Another HCCS No. 339 of 2020.**

This court has found that the plaintiff proved on a balance of probabilities that suffered loss, inconvenience and damage. For that reason, this court grants the plaintiff general damages in the quantum of UGX. 1,000,000/=.

In the final result, I make the following orders.

1. The plaintiff is granted special damages in the quantum of UGX.9,040,000/= (Uganda shillings nine million forty thousand only).
2. The plaintiff is granted general damages of UGX. 1,000,000/= (Uganda shillings one million.).
3. No interest was pleaded and none is granted.
4. In view of the fact that the parties are family members and in the interests of preserving and promoting ongoing family harmony and relations, there shall be ***no order as to costs***. Each party shall bear their own costs of and incidental to these proceedings.



5. All the orders are made against the defendants severally and jointly.

I so order.

Dated at PALLISA this29th.... day ofJanuary.....2026

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HIS WORSHIP KYEMBE KARIM

MAGISTRATE GRADE 1