

CIVIL APPEAL NO.52 OF 2020

ASIIMWE ALLEN :::::::::::::::::::::::::::::::::::::: APPELLANT

HAJJI SALONGO KATENDE..... RESPONDENT

JUGEMENT

1. *The Learned Trial Magistrate erred in law and fact when he failed to award sum of **Ug. Shs 48,000,000** as compensation to the appellant being loss of business and merchandise that was destroyed as a result of wrongful eviction caused by the respondent.*

2. *That the Learned Trial Magistrate erred in law and in fact when he only awarded general damages of **Ug Shs. 4,600,000** and half costs instead of awarding an adequate sum of damages and full costs to the appellant.*
3. *That the Learned Trial Magistrate erred in law and in fact when he failed to properly evaluate evidence on court record as a whole thereby coming to a wrong conclusion.*

The appellant made the following prayers;

- a) That this honorable court allows the appeal.
- b) Awards adequate compensation to the appellant for loss of her business and goods.
- c) Costs of the appeal and full costs from the lower court be awarded to the appellant.

The appellant was represented by *Counsel Atim Evelyn* and the respondent by *Counsel Kenneth Kajeke*.

The court ordered the parties to file their submission which was done by both counsel and this court has duly considered the same.

Determination of the grounds of Appeal

Counsel for the appellant argued the appeal through the grounds of appeal as presented.

The appellant's counsel argued and submitted that the trial Chief Magistrate indeed conceded that the appellant's items were greatly damaged. It was her contention that the appellant filed a list of items with a total value of 46,192,000/= and the trial Magistrate allowed the exhibits by way of photographs but in her view he should have gone ahead to award the

claimed sum of 46,192,000 as compensation since they were destroyed in the wrongful eviction.

The appellant contended that the award of general damages of 4,600,000/= should attract interest from the date of judgment until payment in full.

The respondent's counsel submitted that the Learned trial Chief Magistrate on page 4 of his Judgment analysed the evidence adduced by the parties and he properly came to the conclusion that the plaintiff now appellant had failed to prove her claim of special damages. No evidence was led by the appellant by producing receipts she obtained when acquiring the property allegedly destroyed by the respondent. It was his case that the learned Trial Chief Magistrate was right when he denied to award the appellant the claim of special damages which were not proven.

Secondly, the respondent submitted that the learned trial court was right when he awarded only 4,600,000/= and half of the costs since the appellant bore part of the blame in not paying rent to the respondent.

Duty of the 1st appellate court

The duty of this court as the 1st appellate court is to re-evaluate the evidence on record and come up with its own conclusion see *Pandya vs R [1957] EA 336, Father Nanensio Begumisa and Ors vs Eric Tibebaga SCCA no. 17/20*.

Analysis

The Learned Trial Chief Magistrate in his judgment noted that the removal and confiscation of the plaintiff's property was not proper. As to whether the property was returned in a reasonable state, the pictures show that the same was greatly damaged. The plaintiff exhibited photographs of her damaged property, however, no evidence was adduced as the basis of their costing. This leaves court in doubt as to the value of the same for the court to award the same to the plaintiff. She failed to prove on a balance of probabilities the value of the same and the court cannot award the plaintiff any special damages.

The court found that the plaintiff was entitled to general damages to put her in a position she would have been before the wrong but not to enrich her.

The plaintiff never pleaded any special damages in her pleadings which she drafted herself but rather she listed properties that were in the house and at the time of the filing the plaintiff she never attached any value of the items. The issue of values came as an afterthought during the trial.

In court's view it was a departure from her pleadings and was trying to make her case by leading evidence contrary to the pleadings. The appellant's counsel seemed to argue that the list of the lost items with values was admitted in court as an exhibit. The tendering of evidence to support something not pleaded is not binding on court in determination of the case.

In evaluating any piece of evidence placed before the trial court by the parties, the trial court is duty bound to consider the totality of the evidence led by each of the parties. It should then place it on an imaginary scale of justice to see which of the two sides weighs more credibility than the other. Thus evaluation of evidence by trial court entails should necessarily involve a reasoned belief of the evidence of the other or a reasoned preference of one version to the other. See *Adesina v Ojo (2012) 10 NWLR p 552*

In evaluating evidence, the court is bound to put the entire evidence on the imaginary scale of justice to determine in whose favour the balance tilts. The learned trial Chief Magistrate properly evaluated the evidence presented by the appellant and found it questionable and especially the values attached without any basis. The appellant's claims based on a list of items tendered in court could not be the basis of awarding such unsupported claims.

In the process of the evaluation or assessment of evidence, the court would be guided by recognized considerations such as; a) Admissibility of the evidence; b) Relevancy of the evidence; c) Credibility of the evidence; d) Probability of the evidence; and e) Conclusiveness of the evidence. After taking into consideration these factors, the court would then apply the

applicable laws to the situation presented in the case, as to decide one way or the other. The learned trial Chief Magistrate properly evaluated the evidence and the appellant's claims had no basis and the court was not bound to take them as 'gospel truth' in absence some other evidence to give a proper value to them.

It bears emphasis, that the appraisal of oral evidence and the ascription of the probative value to such evidence is the primary duty of a trial court. Once a trial court has applied the established principles of law in the assessment or evaluation of evidence adduced before it, an appellate court would have no viable justification to interfere with the decision notwithstanding the style adopted in the procedure of the evaluation. See also *FK Zaabwe v Orinet Bank and Other SCCA No. 4 of 2006*

The appellants counsel further prayed for exemplary damages contending that the defendant's actions were extremely oppressive and arbitrary and it required the magistrate to award exemplary damages in addition to compensation.

This prayer had no basis since it was never pleaded in the plaint and was being argued as a ground of appeal when it was equally not arising from the trial court judgment.

The duty of the appellant of the appellant challenging evaluation of evidence is an onerous one. It is not sufficient for an appellant to allege that the trial court did not evaluate properly the evidence before it. The appellant must go further by pointing out the error he complains about and, in addition, he has to convince the appellate court that if corrections of the error are made, the decision of court will not stand.

The appellant's counsel also sought to challenge the Learned Trial Chief Magistrate when awarded general damages of **Ug Shs. 4,600,000** and half costs instead of awarding an adequate sum of damages and full costs to the appellant.

It is a well-established principle that an appellate court has no jurisdiction to interfere with damages awarded by the trial court unless the trial court had proceeded on a wrong principle (as by taking into account some irrelevant factor or leaving out of account some relevant one) or had incorrectly applied a legal principle or the award is unreasonably high or low that it is an erroneous estimate of the damages.

I have not found any basis for the challenge of the general damages awarded by the learned trial Chief Magistrate and indeed the appellant abandoned the same by pleading for interest in lieu an increase of adequate compensation.

The appellant challenged the award of half costs in the matter. **Section 27 of the Civil Procedure Act Cap 71**, which provides that costs of any action, cause or matter shall follow the event unless court for a good cause orders otherwise. Counsel for the appellant contended that that the trial magistrate did not give his reasons for not granting full costs.

The learned Trial Chief Magistrate in his judgment noted that the plaintiff was a tenant of the defendant and at the time of her unlawful eviction admits she was in arrears. In the interest of justice, I find the plaintiff though successful is not represented and will be entitled to half of the costs.

In my view the court availed the reason for the award of half of the costs, therefore this ground of challenge is baseless and devoid of any merit. The award of costs is discretionary as per section **27 of the Civil Procedure Act Cap 71**. The essence of costs is to compensate the successful party for part of the loss incurred in litigation. Costs cannot cure all the financial loss sustained in the litigation. It is not meant to be a bonus to successful party, and not to awarded on sentiments.

An appeal court has competence to review the costs awarded in the lower trial court only where the appellant who was the loser in the lower court or trial court succeeds in the appeal. In the instant appeal, the appellant is

challenging the award of half of the costs which lacked proper basis since the lower court found the appellant partially to blame since she was in rent arrears notwithstanding the liability of the respondent of wrongly evicting her.

This ground of appeal or challenge equally fails.

This appeal fails on all the grounds and is dismissed with costs in this court.

I so Order.

Ssekaana Musa

Judge

12th January 2024