

DAMAGES, INTERLOCUTORY AND FINAL COURT ORDERS IN CIVIL MATTERS

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INTRODUCTION

- Every civil cause ends with issuance of a particular order(s).
- Issuance of a clear and final order is the epitome of any judicial proceeding. Interlocutory orders are no exception to this rule. Unclear interlocutory orders cause untold controversy.
- Final orders are manifested in the making of awards, usually, though not always, in damages.

DAMAGES

- Courts have the task to award and to assess damages.
- Assessment and award of damages is not an easy task for a trial court despite presence of established guiding principles.
- In a few cases, the rules and principles governing the award of damages are set out by statute (statutory damages). A number of statutes provide for such damages.
- In most of the cases, the rules and principles derive their roots in common law.

Definition of Damages

- Damages are a sum of money awarded by a court as compensation for a tort or breach of contract.
- By nature and character, damages are compensatory and are not awarded as a punishment to the party in breach, except in a few cases.
- The primary function of damages is to place the plaintiff in as good a position as he/she was before the wrong.
- The plaintiff must not receive more or less than the appropriate measure of damages commensurate with his or her 'material loss'. The rule has exceptions (aggravated, exemplary damages).

Classification of Damages

- Damages are classified into three (3) broad categories;
 - Special damages
 - General Damages
 - Nominal Damages
- The other range of damages flow from either of the above categories.

Special Damages

- Damages that are ascertainable and quantifiable before the action; they must be pleaded specially and proved strictly. (*Provincial Insurance Co. of E.A Ltd v Mordekai Mwanga Nadwa [1995-1998] 2 EA 289; Uganda Telecom Ltd v Tanzanite Corporation [2005] 2 EA 331*).
- The court awards what was pleaded by the party with sufficient specificity and proved at the hearing with sufficient evidence.
- Special damages do not always have to be proved by documentary evidence but may also be proved by cogent verbal evidence.

General Damages

- The direct natural or probable consequence of the act complained of. (***Stroms v Hutchinson [1950] AC 515, Per Lord Macnaghten***)
- General damages are implied in every breach of contract and every infringement of a given right. (***Ashby v White [1703] 2 Ld Raym 936***)
- Example: In a personal injuries claim, general damages will include anticipated future loss, damages for pain and suffering, inconvenience and loss of amenity.

Nominal Damages

- A sum of money that may be spoken of, but that has no existence in point of quantity. A mere peg on which to hang costs. (*Beaumont v Greathead* (1846) 2 CB 494; 135 ER 1039; *Bart M. Katureebe (JSC), Principles Governing the Award of Damages in Civil Cases, A Paper Presented at the Induction of Newly Appointed Judges of the High Court of Uganda, Entebbe Resort Beach Hotel, 18th June 2008, at page 6; Njareketa v Director Medical Services Mulago* [1950] 17 EACA 60 and more recently, *John Kamuhanda & Others v Attorney General, Consolidated HCCS No. 664 of 2005 & No. 141 of 2007*).

Nominal Damages – Cont'd

- A plaintiff is entitled to nominal damages where;
 - his/her rights have been infringed but has not in fact sustained any actual damage from the infringement;
 - he/she has failed to prove any such actual damage; or
 - where the plaintiff is not concerned with the question of actual loss but brings the action simply with the view of establishing his/her right.

Other Range or Kinds of Damages

Exemplary Damages

- Not compensatory but rather punitive or exemplary in nature.
- Represent a sum of money of a penal nature in addition to the compensatory damages given for the loss or suffering occasioned to a plaintiff.
- The rationale is to punish the defendant and deter him/her from repeating the wrongful act; not a means to enrich the plaintiff. “... *damages for example’s sake*” – *Per Lord McCardie J. in Butterworth v Butterworth & Englefield [1920] P 126.*

Exemplary Damages – cont'd

- Awarded in 3 categories of cases;
 - where there has been oppressive, arbitrary, or unconstitutional action by the servants of the government.
 - where the defendant's conduct has been calculated by him to make a profit which may well exceed the compensation payable to the plaintiff.
 - where some law for the time being in force authorizes the award of exemplary damages. (*Per Lord Devlin in the landmark case of Rookes v Barnard [1946] ALL ER 367 at 410, 411*).

Exemplary Damages – cont'd

- Three matters to bear in mind before awarding exemplary damages;
 - the plaintiff cannot recover exemplary damages unless he or she is the victim of punishable behavior.
 - the power to award exemplary damages should be used with restraint.
 - the means of the parties are material in the assessment of exemplary damages. (*Rookes v Barnard, supra; Fredrick J. K. Zaabwe v Orient Bank & Others, Supreme Court Civil Appeal No. 4 of 2006*)

Aggravated Damages

- Are awarded in form of an “extra compensation” to a plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted.
- Appearance of a thin line between exemplary damages and aggravated damages.
- Succinct distinction by **SPRY, V.P** in ***Obongo v Kisumu Council [1971] EA 91, at page 96 thus;***

“The distinction is not always easy to see and is to some extent an unreal one. It is well established that when damages are at large and a court is making a general award, it may take into account factors such as malice or arrogance on the part of the defendant and this injury suffered by the plaintiff, as, for example, by causing him humiliation or distress. Damages enhanced on account of such aggravation are regarded as still being essentially compensatory in nature. On the other hand, exemplary damages are completely outside the field of compensation and, although the benefit goes to the person who was wronged, their object is entirely punitive.”

Liquidated Damages

- Unique to claims for breach of contract.
- Parties may agree by contract that a particular sum is payable upon the default of one of them.
- Also applies to sums expressly made payable as liquidated damages under a statute.
- Where the court has to quantify or assess the damages or loss, whether pecuniary or non-pecuniary, the damages are said to be 'unliquidated'.

General Principles on Measure or Assessment of Damages:

Loss and Damage

- The law presumes damage in respect of any unlawful act.
- As a general rule, proof of actual damage is not essential to entitle a plaintiff to an award of damages for breach of contract or injury to a right.
- But there are exceptions to this rule;
 - a corporate entity alleging defamation
 - product liability claims

(See: *Ssendi Edward v Crown Beverages Ltd* [2005] 2 ULSR 7)

Restituo in Integrum

- A fundamental principle applicable to assessment of damages.
- The court must in all cases award damages with the object of compensating the plaintiff for his/her loss.
- In contract, the intention is that the plaintiff is placed in the position he/she would have been in had the contract been performed. (*Uganda Telecom v Tanzanite Corporation [2005] EA 351*)
- In tort, the court should as nearly as possible get to that sum of money which will put the injured party into the same position as he/she would have been in if he/she had not suffered the wrong or damage. (*Karim Hirji v Kakira Sugar Works Ltd, CACA No. 84 of 2002*)

Causation and Remoteness

- Damages are recoverable where there is a nexus with the wrongful act.
- The damage (material loss alleged) must be proximate, fairly and reasonably connected with the breach of the contract or wrong. (*Hardley v Baxendale [1843-60] All ER Rep 461*)
- In tort, the injury must have been reasonably foreseeable as a direct consequence of the wrongful act or omission.
- In contract, the liability is limited to losses that are the proximate, probable and likely consequences of the breach, or such as may be taken to have been fairly in the contemplation of the parties when the contract was entered into.

Aggravation and Mitigation of Damages

Aggravation

- In contract, damages are ordinarily confined to losses which are capable of being appreciated in money.
- However in exceptional circumstances, the court may look at some aggravating factors.
- Both in contract and tort, aggravating factors will have the effect of increasing the quantum of damages awarded by the court. (*Ahmed Ibrahim Bholm v Car & General Ltd SCCA No. 12 of 2003*)

Mitigation

- Under contract, it is a well-established rule of common law that the plaintiff has a duty to mitigate damages. (*Frost v Knight*[1861-73] *All ER Rep* 221)
- The plaintiff cannot claim any part of the damage that is due to his/her neglect to take such steps that would have had the effect of reducing his/her loss.
- In tort, a plaintiff is not bound to spend money to minimize his damages. The rule however has an exception. (*African Highland Produce Ltd v Kisorio* [2001] *EA* 1).

Damages on Appeal

- Assessment of damages is principally the duty of the trial court.
- In the commonwealth, appellate courts engage in the activity of assessment of damages in the most exceptional of cases.
- The role of the appellate court in the province of damages was well articulated by **Greer LJ** in ***Flint v Lovell* [1935] 1 KB 354.**

Damages on Appeal – Cont'd

- In order for an appellate court to reverse a decision of a trial court on damages, it must be shown that, either;
 - **the trial judge acted upon some wrong principle of law, or**
 - **that the amount awarded was so extremely high or very small as to make it, in the judgment of the appellate court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.**
 - **The principles have been applied by the courts in Uganda. (*Impressa Federici v Irene Nabwire, Supreme Court Civil Appeal No. 3 of 2000, among others*).**

OTHER ORDERS

Interest

- Award of interest in civil cases is provided for under Section 26 of the Civil Procedure Act.
- Award of interest is discretionary; although it at times becomes *prima facie* mandatory.
- Interest on personal injury damages is exempt from income tax.
- Guidelines for calculation of interest are well laid out in the case of ***Wright v British Railways Board [1983] 2 AC 773***. Also See: ***Premchandra Shenoji & Another v Maximor, SCCA No. 31 of 2003***.

Costs

- Award of costs is governed by the provision under Section 27 of the CPA.
- Interest may also be awarded on costs at any rate not exceeding 6% p.a.
- Costs are awarded to advocates as remuneration for exercise of their professional skill and to litigants in person strictly for work and disbursements.
- Assessment of actual costs is done by a taxing master; either the trial magistrate or the Registrar in the case of the HC.

Execution Orders

- Courts are mandated to issue orders for enforcement of court judgments, decrees and orders.
- This applies to orders obtained both from the domestic as well as from foreign courts.
- The details will appear in a separate paper.

Permanent Injunctions

- Court has discretion to award an order of a permanent injunction restraining any person or authority from doing or continuing to engage in any conduct that has been found by the court to be offensive to a judgment creditor.
- The power is derived from the inherent powers of the court based on statutes, common law and the prerogative powers in the case of the High Court.

Election Petition Remedies

- Courts are mandated to hear and dispose of expeditiously elections petition matters.
- A Magistrate Grade 1 Court has jurisdiction to handle election petitions relating to elections at a village, parish or county; referred to in the Act as administrative lower councils (**S. 168 Local Government Act Cap 243**).
- The range of orders issued include;
 - dismissing the petition and declaring a respondent as having been duly elected;
 - annulling and setting aside an election and ordering a fresh election;
 - declaring a petitioner as the duly elected candidate in place of the one declared by the court not to have been duly elected;
 - costs and any other order relevant in the circumstances of the matter.

Specific Performance

- Traditionally **an equitable remedy in the law of contract**; a court issues an order requiring a party to perform a specific act, such as to complete performance of the contract.
- The remedy has been made part of our statutory law under Section 64 of the Contracts Act, No. 7 of 2010.
- The section makes provision for the circumstances under which the court may make an order for specific performance.

INTERLOCUTORY ORDERS

- Interlocutory applications are intermediate between the filing, hearing and disposal of main suits/causes. They may be commenced at any time of the proceeding; before and after judgement.
- The procedure is set out under particular rules within the CPR.
- The range of interlocutory orders that may be issued by the court is wide and what is important is to note the principles that govern issuance of a particular order as laid down either in the rules or decided cases.

Conclusion

- Subject is wide and the paper is by no means exhaustive.
- Major purpose was to stimulate your interest in the subject, give leads to the essential principles and to points of check in case of a need for further study.
- What stands out;
 - A Judicial Officer needs to be alive to the range of available orders and to the principles governing the award and assessment of such orders.
 - A decision of a court is as effective as the clarity of the orders issued by the court.
 - Always bear in mind: ***“An order that is unclear is largely unenforceable; and an order that is unenforceable is an order passed in vain”***.

END

THANK YOU FOR YOUR ATTENTION