



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-CA-0063-2021**

5 **(ARISING FROM MBARARA CHIEF MAGISTRATES COURT MBR-00-CV-CS-217-2019)**

RUCHEMA PETER EMMANUEL ----- APPELLANT

VERSUS

10 **BARYAYEBWA HANNINGTON K. ----- RESPONDENT**

BEFORE : Hon. Justice Nshimye Allan Paul M.

15 **JUDGMENT**

REPRESENTATION

The Appellant was represented by M/s Manigaruhanga and Co. Advocates, while the Respondent was represented by M/s Matovu Suwaya & Co. Advocates.

20 **BACKGROUND**

25 The Respondent (*then the plaintiff*) sued the Appellant (*then the defendant*) vide Civil Suit No.217 of 2019 before the Chief Magistrate's Court of Mbarara at Mbarara by way of an ordinary suit filed on 12th June, 2019 seeking a declaration that the Appellant (*then then defendant*) owes him a liquidated sum of UGX 10,300,000/= only. In the suit, the Respondent (then the plaintiff) also sought for general and special damages, interest and costs of the suit (*see paragraph 6 of the plaint*).

30 The Respondent (*then the plaintiff*) pleaded that the appellant herein was his long-time friend and when the respondent was going to marry, the appellant was his go-between for the couple. He contended that following the visit to the now wife's family, dowry of 11 (eleven) cows was agreed (*see paragraph 6 of the plaint*).

That by mutual agreement between the appellant and respondent herein, it was agreed that the appellant herein purchases 11 cows (heifers) on behalf of the respondent herein. The respondent herein stated in the plaint that he entrusted his friend and go between, the appellant, to buy the 11 cows (heifers) on his behalf so that the respondent (*then the plaintiff*) would take them to his in-laws in fulfilment of the cultural norm. That the appellant was given shillings 10,300,000/= to purchase the cows, but, according to the respondent the cows were not purchased despite several reminders which caused the respondent humiliation among his in-laws , mental anguish for which he sought damages in the plaint.

The appellant (*then the defendant*) in a written statement of defence (WSD) filed on 26th June 2019 contended that the respondent's claim is baseless, vexations and a wastage of courts time. He stated that he was the go-between of the couple.

He contended that the cows were purchased, and delivered to the respondent's father-in-law in accordance to cultural norms which led to the father-in-law acknowledging receipt (*see paragraph 4 of the WSD*). A copy of the letter signed by the father-in-law acknowledging receipt of the dowry was attached as annexure A to the WSD and was at the trial before the Magistrate exhibited as DE2 and with its English translation marked DE2T. The appellant (*then the defendant*) prayed that the suit be dismissed.

The suit before the trial Magistrate's court was scheduled on 15/10/2019.

The agreed facts as recorded in the record of proceedings are;

1. *That the defendant (now appellant) was the go-between of the plaintiff and his wife.*
2. *That the defendant (now appellant) received shs 10,300,000/=.*

The issues for determination before the trial Magistrate's court were;

1. *Whether the Defendant (now appellant) owes the Plaintiff (now respondent) a sum of shs 10,300,000/=.*
2. *What remedies are available.*

In a judgment delivered on 12th October 2021, the learned Magistrate Grade 1, His Worship Seruwo Benjamin Martin decided in favour of the respondent herein (*then the plaintiff*) holding that the defendant (*now the appellant*) was in breach of what was agreed. His Worship then ordered that;

A. *The defendant (appellant herein) pays Uganda shillings 10,300,000/= to the plaintiff (respondent herein) as claimed*

B. *The defendant (appellant herein) pays general damages of Uganda shillings 3,000,000/=*

C. *That the defendant (appellant herein) pay interest of 8% PA on A above until full payment*

D. *The plaintiff (respondent herein) is awarded costs of the suit*

The appellant being dissatisfied with the decision, of the learned Magistrate Grade 1 in MBR Civil Suit No.217 of 2019 delivered on 12th October 2021, lodged this appeal *vide* a memorandum of appeal filed on 25th November 2021.

GROUND OF APPEAL

The grounds as stated in the memorandum of appeal are;

1) The learned trial Magistrate erred in law and fact when he failed to make a correct evaluation of the evidence adduced as a whole and consequently came to a wrong decision that the Defendant/Appellant owes the Respondent a sum of UGX10,300,000/=.

2) The learned trial Magistrate erred in law and fact when he held that the plaintiff's evidence was contradictory and that the cows were not delivered against the overwhelming evidence of the witnesses.

3) The learned trial Magistrate erred in law and fact and occasioned a miscarriage of justice when he disregarded evidence of DW2 – the Respondent's father-in-law who received the cows.

4) The learned trial Magistrate acted illegally and with material injustice when he awarded general damages of UGX3,000,000/= only and interest of 8% per annum.

The Appellant prayed that;

1. The appeal is allowed.

2. The judgment and orders of the Magistrate Grade One be set aside.
3. Costs of the appeal.

SUBMISSIONS

- 5 The parties filed written submissions, which this court has considered.

Appellant's submissions

10 On ground 1, it was submitted for the appellant that it was hard for him to find the cows but upon getting them, he delivered them to the father of the bride who acknowledged receipt in writing. That the Respondent's family was called to see the cows but they declined. It was contended that the respondent never communicated to the Appellant the place for delivery of the cows. Counsel then submitted that the trial Court did not properly evaluate the Appellant's evidence.

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On ground 2, counsel argued that the Appellant adduced evidence that he bought 10 cows and incurred transport costs from the money he was given by the Respondent and his wife.

20 On ground 3, counsel submitted that DW2 – the Respondent's father-in-law, testified that he received the cows for bride price from the Appellant and he acknowledged in writing. That he called the Respondent's family to come and see the ten cows at Sanga and they declined. That DW2 gave away his daughter in cultural marriage basing on the ten cows as bride price. Counsel faulted the trial Court for not considering DW2's evidence.

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On ground 4, counsel cited Kakeeto Vs Nabukenya Civil Appeal No.108 Of 2018 for the position that general damages are such as the law would presume to be a direct natural or probable consequence of the act complained of. That the trial Court issued excessive general damages in the circumstances by not stating the reasons that warranted a grant of UGX3,000,000/=. Counsel also argued the trial Court did not exercise its discretion reasonably in awarding interest of 8% per annum. Counsel prayed for this Court to alter the award for general damages and interest, and for the general success of the appeal.

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Respondent's submissions

On ground 1, counsel for the respondent submitted that it is not disputed that the Respondent and his wife gave the Appellant UGX 10,300,000/= only to buy eleven cows, and that they were to be handed over to the Respondent or Respondent's family in Karama village. That according to the evidence of DW3 an expert in Kinyankore culture, it is the family of the groom that brings the cows to the family of the bride. And that the Appellant did not inform the Respondent of the alleged delivery to his father-in-law.

On ground 2, counsel argued that no evidence was adduced to prove that the Appellant purchased the cows, nor that they had been delivered, which contradicts the Appellant's contention that they cows were bought.

On ground 3, counsel adopted her submissions on grounds 1 and 2 and added that as per the evidence of PW1, PW2 and PW3, the in laws agreed to give away their daughter irrespective of her husband's failure to pay bride price.

On ground 4, it was argued that the Respondent was entitled to general damages given the humiliation he suffered for failure to pay bride price. Counsel prayed for the appeal to be dismissed with costs.

DUTY OF APPELLANT COURT

The duty of a first appellate court was laid out in the case of **FR. NARSENSIO BEGUMISA AND 3 ORS V. ERIC TIBEBAGA SCCA NO. 17 OF 2002 [2004] UGSC** 18 that;

The legal obligation on a first appellate court to re-appraise evidence is founded in the common law, rather than in the rules of procedure. It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions.

The above principles will guide this court in addressing of the grounds of appeal I will first determine ground 1,2 & 3 together then handle ground 4.

DETERMINATION

5 **GROUND 1,2&3.**

The facts that gave rise to the suit in the lower court and subsequently this appeal relate to the custom of giving dowry in a customary marriage ceremony.

10 In principle customary marriages in Uganda are governed by the custom of the bride, since it is the bride's family that is requested for a bride. It therefore follows that where a claim is based on customary practices, the person seeking redress of court must lead evidence of the customary practice save where it is judicially noticed.

15 The evidence on record in the letter of the father-in-law acknowledging receipt of the cows exhibited as DE2, shows that the father of the bride stated that he received the dowry and promised to communicate to the respondent a giveaway date in accordance to marriage customs of the **Banyankore** and **Banyarwanda**. The respondent therefore ought to have laid out which custom
20 of the two he is basing on to make the claim and ought to have led evidence to that effect.

Banyankore and Banyarwanda are an indigenous community in Uganda, listed as number 21 and 24 respectively, on the list of indigenous communities in
25 Uganda shown in **THE THIRD SCHEDULE OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA**. The customary marriage steps of the Banyankore and Banyarwanda are largely similar but have some differences, which I believe may explain the misconceptions that calumniated into this suit. I will lay down the salient practices of customary marriages among the Banyakore and the
30 Banyarwanda.

The go-between in the Banyankore culture is called a **Katerarume** while in the Banyarwanda culture the person is called **Umuranga**. The dowry that is given by the groom's family as a symbolic appreciation to the bride's family is called
35 **enjugano** among the Banyankore, while it is called **inkwano** among the Banyarwanda.

Banyankore customary marriage main steps are;

1. **KUGAMBA OBUGYENYI:** The groom's family led by the **Katerarume** visits the bride's family to express interest in the bride.
2. **OKUSHWERA:** This in the Ankole culture refers to marriage. The groom's family asks for a bride. The bride's family considers the request and may agree to give their daughter in marriage (**Okuhereza Omukazi**).
3. **ENKWATA RUGO:** Once the bride's family agrees to give their daughter in marriage, the grooms family gives a cow to signify that the girl is spoken for.
4. **OKUJUGISA:** This is a ceremony in which the families discuss the dowry to be given to the bride's family.
5. **OKUJUGA:** This is the formal handover of the dowry called **enjugano** in Kinyankore to the bride's family.
6. **OKUHINGIRA:** This is the traditional **giveaway ceremony** where the bride's family officially hands over the bride to the groom's family. The bride is sent off to the groom's family with gifts (**Omugamba** and **Emihingiro**).

Banyarwanda customary marriage main steps are;

1. **KURAMBAGIZA:** This involves identification of a suitable bride.
2. **GUFATA IREMBO:** The groom's family visits the bride's family led by **Umuranga** to express interest in marrying a girl from that family.
3. **GUSABA UMUGENI:** The groom's family asks for a bride. The bride's family considers the request and give their consent to the marriage proposal by accepting to give their bride (**Kwemerera Umugeni**).
4. **GUKOSHA:** This is a ceremony in which the bride's family determines the dowry in a discussion with the Groom's family.
5. **GUKWA:** This is the formal transfer of the dowry called **inkwano** in Kinyarwanda to the bride's family.
6. **GUTEBUTSA:** This is a reminder that the dowry has been delivered and the grooms family requests for the bride to be delivered (**Guhekyera**).
7. **GUSHYINGIRA:** This is the traditional giveaway ceremony where the bride's family officially hands over the bride to the groom's family.
8. **GUTWIKURURA:** This is ceremony in which the bride's family visits the groom and brides' home to get the bride out of the bedroom. It

symbolises that she is no longer a bride but a wife in the home who should start doing work and taking charge of her home as a wife. The bride's family brings her gifts, seeds and utensils for use in her home
(Ibisingirwa)

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I have considered the evidence on record and I note that the respondent did not lead any evidence to explain under what custom the customary marriage ceremony was conducted, be as it may, the father of the bride in a letter written to the respondent and exhibited as DEX2 confirmed that the dowry was
10 delivered, which means that according to him culture was complied with, since the customary marriages in Uganda are governed by the practices of the bride's custom.

In principle a fact agreed by the parties need not be proved as is provided in
15 **SECTION 57 OF THE EVIDENCE ACT CAP 8.** The evidence on court record shows that the appellant and respondent agreed during scheduling in the trial court that the appellant herein was the go-between in the marriage between the respondent and his wife. This is an admitted fact, that was also stated in the pleadings of both parties, as shown in paragraph 3 of the plaint filed by the
20 respondent herein and paragraph 4 of the written statement of defence filed by the appellant.

A go-between for marriage purposes in Uganda is a respected person that is chosen by the groom or his family to approach the bride's family for purposes
25 of initiating discussions that are intended to lead to a marriage between a man and an identified suitable lady.

A go- between in a marriage setting is therefore an agent of the groom and his family, creating an agency relationship where one person is a principal and the
30 other is a an Agent.

It is trite that a person known as a principal may employ another called an agent to do an act for him or her or to represent him with a third party.

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The law in **SECTION 117 OF THE CONTRACTS ACT CAP 284** defines principal and agent as reproduced bellow

“ PART X AGENCY

117. Interpretation of Part

In this Part, unless the context otherwise requires—

“agent” means a person employed by a principal to do any act for that principal or to represent the principal in dealing with a third person;

“principal” means a person who employs an agent to do any act for him or her or to represent him or her in dealing with a third person;”

Paragraph 3 of the respondent’s complaint contains a claim for a liquidated sum of shillings 10,300,000/= given to the appellant to buy cows for dowry. The evidence on court record shows that respondent herein while testifying as PW2 in the trial court stated that;

“That by mutual agreement between me and the defendant we agreed that the defendant purchases 11 (eleven) cows heifers on my behalf” (see Para 7 of PW2’s witness statement).

It was the respondent’s evidence that the appellant was supposed to buy the cows and hand them over to him. The appellant on his part admits receiving shillings 10,300,000/=:, which he said he used to buy 10 cows at shillings of 1million and the extra 300,000 was used as transport. (see *Paragraph 4 of DW1’s witness statement*).

The respondent stated that the place of delivery was not agreed upon, he went on to testify that the cows were delivered to the respondent’s father-in-law, who acknowledgment receipt in a letter dated 14/06/2019 addressed to the respondent. The letter was exhibited as DE2 and its english translation exhibited as DE2T on court record.

The respondent in his evidence seemed to have viewed the transaction between him and the appellant as a contract for sale of goods (cows) , whereas I think it is not.

A contract of sale of goods is defined in **SECTION 2(1) OF THE SALE OF GOODS AND SUPPLY OF SERVICES ACT CAP 292** as follows;

5 *“A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in the goods to the buyer for a money consideration, called the price.”*

10 A sale of goods contract therefore requires a seller and a buyer. The evidence on record shows that respondent gave the money to the appellant to **help him buy cows on his behalf** (see Paragraph 7 of PW2’s witness statement). This means that the sellers of the cows were other people, and the appellant was a purchaser acting on behalf of the respondent. In my opinion, the interaction between the appellant and the respondent is not a traditional sale of goods agreement, but rather an agency agreement.

15 I am of the opinion that the dealing between the appellant and the respondent was an agency agreement, I am fortified in this thought because the creation of agency does not require consideration as is stated in **SECTION 120 OF THE CONTRACTS ACT CAP 284** and the evidence on record does not show that the parties agreed on consideration to be given to the appellant for being his go-between and helping the respondent by purchasing for him cows to be used for dowry.

25 The respondent was therefore a principal that instructed the appellant as an agent to act on his (respondent’s) behalf to get cows for dowry for the marriage between the respondent and his now wife.

30 It is trite that an agent acting on behalf of the principal has authority to do anything necessary to do the act if lawful as is provided in **SECTION 122 (1) OF THE CONTRACTS ACT CAP 284**, which states;

“122. Extent of authority of agent

(1) An agent with authority to do an act, has authority to do anything which is necessary to do the act, which is lawful.”

The respondent in his testimony stated that he had to buy cows for dowry and he gave the money to the appellant to **help him buy cows on his behalf** (see *Paragraph 7 of PW2's witness statement*). This means that in the end the cows for dowry that the appellant was to purchase were meant to end up at the respondent's father-in-law, in fulfillment of the cultural norms.

It is the appellants evidence on record that he brought the cows and delivered them to the respondent's father-in-law leading to the conclusion of the wedding between the respondent and his current wife (see *Paragraph 5 of the Dw1's witness statement*). The respondent's father-in-law testified as DW2 in support of the appellants' case confirming that he received the dowry cows (see Paragraph 5 of Dw2's witness statement). The father of the bride went on to testify that;

"That my daughter was given away in a color full customary marriage ceremony to the plaintiff on 24/8/2019 upon payment of the bride price."
(see Paragraph 10 of DW2's witness statement).

The respondent while testifying as Pw2 Baryayebwa Hannington stated that the customary marriage between him and the bride took place on 24/08/2019 (see *page 11 line 19 of the record of proceedings*). He also confirmed that his father-in-law James Rubangura was present at the ceremony (see *page 11 line 20 of the record of proceedings*). The respondent's father-in-law testimony on record is that the suit was not necessary, and it has brought disrespect to his family, and his father's family (see *Paragraph 9 of the witness statement*).

The appellant while testifying as Dw1 stated in Paragraph 4 of the DW1's witness statement the price he brought the cows and transport costs he incurred, thereby accounting for all the Uganda shillings 10,300,000 that he received.

I have analyzed the evidence on record , especially the fact that the respondent (*testifying as PW2*), the bride (*testifying as PW3*), appellant (*testifying as DW1*), respondents father in law(*testifying as DW3*) all stated that the giveaway ceremony was done whereby the bride was given away in a colorful customary marriage ceremony to the respondent on 24/8/2019, and

she is now living with the respondent as husband and wife. I find that the appellant as an agent tasked by the respondent to get dowry in the form of cows that were meant to end up with the respondent's father-in-law, did get the cows and delivered them to the intended recipient, the bride's father, who in turn wrote a letter confirming receipt of the dowry (see DE2 and DE2T).

In the letter addressed to the respondent and his wife exhibited on record as DE2, the father of the bride informed the respondent through the appellant that the giveaway ceremony, which is the last stage in the customary marriage ceremony could be held on 17/08/2019 or 24/08/2019. The giveaway ceremony was held on 24/8/2019, and the bride is now living with the respondent as his wife.

The suit in the lower court that led to this appeal was therefore in my opinion not necessary, since the respondent had knowledge of the letter written by his father-in-law confirming receipt of the dowry cows (See DEX2) and he also got the bride at the giveaway ceremony held on 24/8/2019.

In conclusion, I find that the trial Magistrate would have reached a different conclusion in his judgement, if he considered all the evidence on court record such as the fact that;

1. There was no written agreement between the appellant and respondent
2. The appellant while testifying as Dw1 stated in Paragraph 4 of the DW1's witness statement stated the price he brought the cows and transport costs he incurred, thereby accounting for all the Uganda shillings 10,300,000 that he received.
3. The dowry in the form of cows was a gift intended for the father of the bride
4. The father of the bride testified in support of the appellant, confirming that he received the dowry in the form of cows at his farm in Sanga (see page 22 line 5 & 6 of the record of proceedings).
5. That the father wrote a letter addressed to the respondent that was exhibited as DEX2 and its English translation marked DEX2T confirming that the dowry was received.

In conclusion, I find that the appellant doesn't owe the respondent shillings 10,300,000. Therefore ground 1, 2 & 3 of the appeal succeed.

GROUND 4

5 The respondent prayed that the court grants him damages.

In principle the rationale for the award of general damages is to comply with the concept of "*restitutio in integrum*", which is a Latin phrase meaning "restoration to the original condition". It refers to the principle that a person
10 that has sustained damage due to a breach ought to be restored as nearly as possible to the position they were in before the breach complained of occurred.

The respondent claim in Paragraph 6 of the plaint is that he agreed with the
15 defendant (*respondent herein*) that the purchased cows were to be delivered to him (respondent) within a period of 1 month. The appellant in his defence contained in Paragraph 4 of his written statement of defence contended that the cows were delivered to the father-in-law, who acknowledged receipt. These claims by both parties differ on the issue of delivery of the dowry.

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The law in **SECTION 9 (5) OF THE CONTRACTS ACT CAP 284** provides that a contract whose subject matter exceeds twenty-five currency points shall be in writing. A currency point is defined as shillings 20,000 according to the schedule in the Contracts Act CAP 284. Therefore, twenty-five currency points
25 are equivalent to shillings 500,000.

There is no evidence that the parties executed a written agreement, yet the amount involved was shillings 10,300,000/-, if they had done so, the written agreement would have given court a clear picture of what was agreed by the
30 parties in respect to the delivery point of the cows. In the case at hand the respondent claims the cows ought to have been delivered to him as agreed in an oral agreement, while the appellant claims that the delivery point was not agreed upon which promoted him to deliver the cows to the father-in-law the eventual recipient of the dowry. I find that the evidence on record advanced
35 by the respondent in the lower court doesn't sufficiently prove the delivery

point for the cows that were to be sourced by the appellant on behalf of the respondent.

The mission that required the appellant as a go-between was to get a bride for the respondent, so, since the father of the bride acknowledged receipt of the dowry and the giveaway was subsequently completed, leading to the respondent now staying with the bride as his wife. The mission was achieved.

The yardstick of what is acceptable in a customary marriage is governed by the custom of the bride, who in this case was represented by the father, who stated in a letter exhibited as DEX2 that all was complied with in accordance with. It is not open to the groom to state that some aspects such as payment of dowry were not complied with, when the father of the bride, whose culture is applicable, confirmed that dowry was paid and the giveaway was concluded. I find that the respondent's suit in the lower court was frivolous and vexatious.

Having considered the above, I see no breach that warrants the grant of damages to the respondent, who was informed by his father-in-law that the dowry was received, and he was given his bride in a colorful marriage ceremony. It is my considered opinion that if the trial Magistrate had considered the concepts governing the award of damages and applied them to the evidence on record as discussed above, he would not have awarded damages. I therefore find that ground 4 of the appeal succeeds.

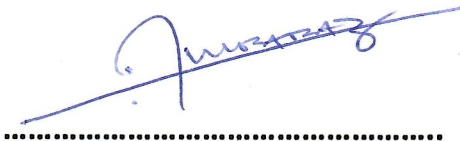
Lastly, the Judiciary of Uganda now promotes alternative dispute resolution mechanisms such as mediation. In my opinion, this case ought to have been resolved through family mediation, more so because, although the custom of giving dowry (bride price) in customary marriages is acceptable in Uganda as was held by the supreme court in **MIFUMI (U) LTD & ANOR V ATTORNEY GENERAL & ANOR (CONSTITUTIONAL APPEAL 2 OF 2014) [2015] UGSC 13** (6 August 2015), it nonetheless does not fetter the parties' free consent into marriage. Dowry is as such regarded as a gift to the parents of the girl for nurturing and taking good care of her up to her marriage, and being a gift, it is not refundable.

In the interest of promoting family unity and cohesion, I will not make an order that costs be paid by one party to another.

In the circumstances, I allow the appeal, and make the following orders;

- 5 1) This appeal is allowed
- 2) The judgment and orders of the Magistrate Grade 1, sitting as the trial
 Court at the Mbarara Chief Magistrates Court vide MBR-00-CV-CS-217-
 2019 are set aside and quashed.
- 3) The parties shall pay their respective lawyers legal fees.

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NSHIMYE ALLAN PAUL M.

JUDGE

23-06-2025

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