

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO. 162 OF 2013**

**JOHN KIBYAMI ..... APPELLANT**

**VERSUS**

**MISSION AND RELIEF TRANSPORT ..... RESPONDENT**

*(An Appeal from the judgment and orders of the High Court of Uganda at  
 Kampala (Commercial Division) before Hon. Justice Lameck N. Mukasa dated  
 23<sup>rd</sup> April, 2010 in Civil Suit No. 263 of 2006)*

**15 CORAM: Hon. Mr. Justice Kenneth Kakuru, JA**

**Hon. Mr. Justice Geoffrey Kiryabwire, JA**

**Hon. Mr. Justice Cheborion Barishaki, JA**

**JUDGMENT OF THE COURT**

**Brief background**

**20** The brief facts as accepted by the learned trial Judge were that the respondent hired the appellant's pick up Motor Vehicle Registration No. UAB 671A to transport some goods from Entebbe Airport to Southern Sudan, the parties agreed to the cost of hire being Ug. shs. 5,000,000/= (five million shillings only). The appellant loaded the goods at Entebbe Airport and on the instructions of the respondent he made a  
**25** stopover at Multiple ICD Nakawa for purposes of verification and payment of taxes. The respondent failed to pay and or to clear the taxes. The appellant's vehicle remained packed at the Multiple ICD Nakawa from 18<sup>th</sup> December 2004 and was

5 still packed there when he instituted the suit on 10<sup>th</sup> May 2006. The learned trial Judge found in favour of the respondent thereby dismissing the suit.

The appellant being dissatisfied with the decision of the learned trial Judge filed this appeal on the following grounds:-

- 10 1. *That the learned trial Judge erred in law and in fact when he held that the respondent was not in breach of its contractual obligations.*
2. *That the learned trial Judge erred in law and fact when he held that the respondent was not responsible for the release of the appellant's vehicle.*
3. *That the learned trial Judge erred in law and fact when he held that the appellant was not entitled to the reliefs sought in the plaint*
- 15 4. *That the learned trial Judge erred in law when he failed to evaluate evidence on record and dismissed the appellant's suit with costs.*
5. *That the learned trial Judge erred in law and fact when he misdirected himself on the law regarding contradictions and inconsistencies and made a wrong finding.*
- 20 6. *That the learned trial Judge erred in law and fact when he based his judgment on the issue of ownership of the vehicle yet the cause of action was breach of contract.*
7. *The learned trial Judge erred in law and fact when he awarded costs to the respondent.*

## 25 **Representations**

At the hearing of this appeal *Mr. Jolly Mutumba* learned Counsel appeared for the appellants. Neither the respondents nor their Counsel were present in spite of the fact that they had been duly served at their last known address. Counsel sought and was granted leave to proceed in their absence under *Rule 56 (1)* of the Rules of this  
30 Court. Counsel with leave of the Court, was allowed to adopt the conferencing notes

5 as written submissions. It is on the basis of the written submissions that this appeal has been determined.

At the conferencing of this appeal, five issues were raised for determination by this Court. These were as follows:-

- 10 1. *Whether it was right to hold that the respondent was not in breach of its contractual obligation.*
2. *Whether it was right to hold that the respondent was not responsible for the release of the appellant's vehicle.*
3. *Whether the appellant was entitled to the reliefs sought for in the plaint.*
4. *Whether the learned trial Judge properly evaluated the evidence on record.*
- 15 5. *Whether the contradictions and inconsistencies in the evidence of the appellant were grave enough to warrant the dismissal of the suit.*

### **Appellant's case**

On ground one it was submitted that, learned trial Judge erred when he held that the respondent was not in breach of its contractual obligations. Counsel argued that, 20 both the appellant and the respondent had contractual obligations, the appellant was contracted to transport goods belonging to the respondent and the respondent had to clear for the goods, however, it failed to perform its duty of paying taxes for the said goods, which resulted into impounding appellant's vehicle. Counsel argued the respondent's failure to clear the taxes amounted to a breach of contract.

25 In respect of ground two, Counsel contended that, the respondent was responsible for the release of the appellant's vehicle and it was an error for the learned trial Judge to find otherwise. The appellant's vehicle was transporting the respondent's goods which the respondent failed to clear. The vehicle could not proceed unless the taxes had been paid. Both the vehicle and the goods were impounded and the

5 respondent bore the responsibility of releasing the appellant's vehicle by paying the URA taxes and parking charges.

On ground three, Counsel contended that the learned trial Judge erred when he held that the appellant was not entitled to the reliefs sought in the plaint. The appellant sought for payment of loss of daily income worth Ug. shs. 30,000/= per day which  
10 the respondent had agreed to pay over the period the vehicle remained packed at ICD Multiple Nakawa however, the respondent failed to pay the same. The appellant also sought for special damages of Ug. shs. 5,000,000/= being the contractual sum for hiring his vehicle as exhibited in the agreement signed between the parties. He further sought for recovery of Motor vehicle UAB 671A or in the alternative pay an  
15 equivalent of Ug. shs. 15,000,000/=. The appellant further sought for general damages for breach of contract. Counsel submitted that the appellant was entitled to all the reliefs sought.

On grounds four and five, Counsel faulted the learned trial Judge for failing to evaluate all the evidence on record and thus arrived at a wrong conclusion. Counsel  
20 submitted that, the appellant adduced sufficient evidence to prove his case. He testified that he entered into an agreement with the respondent to transport goods which resulted into impounding his vehicle. He argued that the respondent never adduced any evidence to the contrary and called no witnesses at all.

The learned trial Judge found that there was a contract between the parties however  
25 the respondent was not in breach of its contractual obligations because the evidence on record indicated that the Vehicle had checked in at ICD Nakawa on 14<sup>th</sup> December 2004 yet the agreement was made on 18<sup>th</sup> December 2004, secondly there were alterations in the vehicle's registration number and thirdly the vehicle's registered owner was Richard Muliika not the appellant.

5 Counsel contended that, most of the exhibits tendered indicated that the vehicle's registration number was UAB 671A except exhibit P3 which contained UAB 671F as the vehicle's registration number, it had been authored by the respondent's officer and it was a minor inconsistency. Counsel further contended that, the appellant had bought the vehicle from Richard Muliika but had not yet transferred the same in his  
10 names.

In respect of ground six, Counsel contended that, the learned trial Judge wrongly based his decision on the ownership of the vehicle instead of breach of contract. The issue of ownership was neither contested by the respondent nor framed as issue during the scheduling conference. The appellant explained that he had bought the  
15 vehicle from Richard Muliika and he was in possession of the logbook but had not yet transferred the same into his names.

On ground seven, it was contended that, the learned trial Judge failed to evaluate all the evidence on record, wrongly dismissed the appellant's case and erroneously awarded costs to the respondent.

20 Counsel asked Court to re-evaluate all the evidence on record, allow the appeal with costs and set aside the Judgment and orders of the trial Court.

### **Resolution**

This Court is required under *Rule 30* of the Rules of this Court to re-appraise the evidence of the trial Court and come to its own decision. *Rule 30 (1) (a)* provides as  
25 follows:-

*"Power to reappraise evidence and to take additional evidence.*

*(1) on any appeal from a decision of the High Court acting in its original jurisdiction, the court may-*

*(a) reappraise the evidence and draw inferences of fact"*

5 See:- *Fr. Narcensio Begumisa & others vs Eric Tibebaaga*, Supreme Court Civil Appeal No. 17 of 2002, *Kifamunte Henry vs Uganda*, Supreme Court Criminal Appeal No. 10 of 1997 and *Bogere Moses vs Uganda*, Supreme Court Criminal Appeal No. 1 of 1997.

We shall keep the above principles in mind while resolving the grounds of appeal.  
10 We have carefully perused the record and considered the submissions of Counsel. We now proceed with our duty of evaluating the evidence.

In respect of ground 1, the appellant faults the trial Judge for finding that the respondent was not in breach of its contractual obligations.

We have carefully perused the High Court Judgment and found that the learned trial  
15 Judge dealt exhaustively with issues before him at the trial. In order not to repeat ourselves, we are constrained to reproduce in *extenso* the pertinent parts of his Judgment.

While resolving the issue raised in ground 1 of the appeal the learned trial Judge stated as follows at pages 7 and 8 of his Judgment correspondingly pages 109 and  
20 110 of the record of appeal as follows:-

*"The agreement relevant to the transaction in issue, exhibit P2, is dated 18<sup>th</sup> December 2004. The plaintiff testified that he transported the goods on Motor Vehicle Reg. No UAB 671A. He tendered in evidence two photographs of a loaded pick-up Reg. No. UAB 671A as exhibit P18 (A) and (B). The plaintiff's  
25 evidence is that he had parked the said vehicle at Multiple ICD yard on 18<sup>th</sup> December 2004 coming from Entebbe. Exhibit P1 dated 23<sup>rd</sup> December 2004 is URA Northern RCTD Dispatch List Form PRO TMU to SPRO Northern. Among the vehicles listed thereon is Reg. No UAB 671A with an indicated date of exist of 23<sup>rd</sup> December 2004 and station of exit is Araba. This evidence shows that the  
30 vehicle was cleared by URA to exit at Araba on 23<sup>rd</sup> December 2004, however*

5            *exhibit P22, a letter from Multiple ICD Limited, to M/S Muhanguzi, Muhwezi and Co. Advocates, shows that motor vehicle UAB 671 arrived in their transit on 14<sup>th</sup> December 2004. The letter confirms that the vehicle is since then lying in the yard...*

10            *The above shows that motor vehicle UAB 671 had checked in at Multiple ICD Ltd parking yard on 14<sup>th</sup> December 2004. This date is earlier than the date of the agreement which is subject of this suit. It is earlier than the date the plaintiff says he loaded the goods which were the subject of the agreement. EXHIBIT P2 is dated 18<sup>th</sup> December 2004. This creates doubts in my mind whether the transaction which is the subject of the agreement dated 18<sup>th</sup> December 2004 is*  
15            *the same transaction under which Motor vehicle UAB 671A was parked at Multiple ICD yard...*

20            *The plaintiff has failed to prove that the vehicle at Multiple ICD yard was the vehicle used for the job contracted for by the plaintiff under the agreement tendered in evidence. Further the plaintiff has failed to prove that the defendant was in breach of that agreement."*

From the above findings, we note that the appellant entered into the Contract with the respondent on 18<sup>th</sup> December 2004 to transport goods to Southern Sudan using Motor Vehicle Reg. no. UAB 671A and made a stop-over at ICD Multiple. However, according to the evidence on record the said motor vehicle is said to have checked in  
25            at ICD Multiple yard on 14<sup>th</sup> December, 2004. This discrepancy was not explained by the appellant. There is a possibility that, the appellant's vehicle had been impounded for other purposes other than for purposes of clearing taxes of the goods belonging to the respondent. It appears that when the appellant entered into the contract he considered it as a golden opportunity to have his vehicle cleared by alleging that, it  
30            contained goods belonging to the respondent. Furthermore there is more evidence showing that the motor vehicle was dispatched on 23<sup>rd</sup> December 2004, which

5 means that the vehicle had been cleared but the appellant failed to pick it. In addition to that, Exhibit P3, is a letter dated 25<sup>th</sup> May, 2005 authored by Albert Kunihira an employee of the respondent, it indicates that the goods were to be offloaded off the vehicle reg. no. UAB 671F on 26<sup>th</sup> May, 2005. There is no satisfactory explanation as to why the appellant's vehicle which had been released  
10 by Uganda Revenue Authority on 23<sup>rd</sup> December 2004, would have remained in the parking yard until May 2005 when the goods were offloaded. We find that the appellant failed to prove his claim in this regard.

We find no reason to fault the learned trial Judge's finding, his decision is upheld that the respondent was not in breach of its contractual obligations. Ground 1  
15 accordingly fails.

On ground 2, it is the appellant's contention that, the respondent was responsible for the detention of his vehicle and he faults the learned trial Judge for finding otherwise. The evidence on record indicates that the vehicle in issue had been checked at Uganda Revenue Authority yard a date earlier than 18<sup>th</sup> December, 2004  
20 the date the contract upon which the claim is based was entered into by the parties. No satisfactory explanation was provided to Court by the appellant to explain this anomaly. We have found that the appellant failed to prove breach of contract by the respondent while resolving ground one and as such we find no merit in ground two of this appeal.

25 In respect of ground three, the appellant contends that the learned trial Judge erred when he held that the appellant was not entitled to the reliefs sought in the plaint. The appellant sought for a number of remedies including special and general damages. *Section 61 (1)* of The Contracts Act, 7 of 2010, is to the effect that where there is a breach of contract, the party who suffers the breach is entitled to receive  
30 from the party who breaches the contract, compensation for any loss or damage caused to him or her. For a loss arising from a breach of contract to be recoverable,



5 it must be such as the party in breach should reasonably have contemplated as not  
unlikely to result. The precise nature of the loss does not have to be in his or her  
contemplation, it is sufficient that he or she should have contemplated loss of the  
same type or kind as that which in fact occurred. There is no need to contemplate  
the precise concatenation of circumstances which brought it about See: *The Rio*  
10 *Claro* [1987] 2 *Lloyd's Rep* 173.

The common law rule is that where a party sustains a loss by reason of a breach of  
contract, he ought, to be placed in the same situation, by award of general damages,  
as if the contract had been performed See: *Kibimba Rice Ltd vs Umar Salim*, *Supreme*  
15 *Court Civil Appeal No. 17 of 1992*.

The appellant claimed to have suffered loss to the respondent's failure to clear for  
the goods he was contracted to transport, he claimed for the contract price Ug. shs  
5,000,000/=recovery of Motor vehicle UAB 671A or in the alternative an equivalent  
20 of Ug. shs. 15,000,000/= and loss of daily income worth Ug. shs. 30,000/=. According  
to the evidence on record the appellant did not perform his part of the contract,  
which was to transport goods to Southern Sudan from Entebbe for which he was to  
be paid Ug. shs 5,000,000/=. Clearly from the evidence he did not perform what he  
was contracted to do. The Court could not therefore have awarded him damages.  
25 This ground of appeal also fails.

In respect of grounds four and five, it is the appellant's contention that the learned  
trial Judge failed to evaluate all the evidence on record and misdirected himself on  
the law regarding contradictions and inconsistencies. The law relating to  
contradictions and inconsistencies is well settled that when they are major and  
30 intended to mislead or tell deliberate untruthfulness, the evidence may be rejected.  
If, however, they are minor and capable of innocent explanation, they will normally  
not have that effect. See:-*Alfred Tarjar vs Uganda Criminal Appeal No 167 of*

5 1969(EACA). The contradictions were mainly in respect of the vehicle's Registration  
Number most of the exhibits tendered indicated that the vehicle's registration  
number was UAB 671A except exhibit P3 which contained UAB 671F as the vehicle's  
registration number. Some of these exhibits as observed earlier indicated that motor  
vehicle Reg. No UAB 671A had checked in at ICD Multiple yard earlier than 18<sup>th</sup>  
10 December 2004 and the same was dispatched on 23<sup>rd</sup> December 2004. Motor  
Vehicle Reg. No. UAB 671F was contained in letter indicating that the goods were to  
be offloaded on 26<sup>th</sup> May, 2005. These seem to be different vehicles altogether. The  
learned trial Judge's finding was that this discrepancy was unexplained by the  
appellant and as such his claim to Court would not be sustained. In other words the  
15 trial Judge found that the appellant had failed to prove his claim on a balance of  
probabilities because of the appellant's gaps in pleadings and evidence. We find no  
reason to fault the learned trial Judge.

Even if there was a breach of contract the appellant had a duty to mitigate loss by  
requesting for his Motor vehicle to be released by Uganda Revenue Authority. The  
20 goods would be off loaded and warehoused. No evidence was adduced to show that  
Uganda Revenue Authority refused to release or that the appellant made any effect  
to mitigate loss.

Had he done so, then an action in tort of detinue would have arisen against Uganda  
Revenue Authority. In which case the respondent would have been a wrong party in  
25 action for detinue, where Uganda Revenue Authority had impounded the appellant's  
Motor vehicle without justification.

If Uganda Revenue Authority had impounded the motor vehicle on account of its  
carrying uncostumed goods, then an action in tort would have accrued against the  
respondent. See:- *Christine Bitarabeho Vs Edward Kakonge, Supreme Court Civil*  
30 *Appeal No 4 Of 2000* and Court would have awarded damages in tort and not in

5 contract. The suit from which this appeal arises was premised on breach of contract only and no action in tort accrued.

We have carefully perused the trial Judge's judgment, he clearly spelt out all the evidence that had been adduced by both parties he properly scrutinised and arrived  
10 at a right conclusion. We find no merit in grounds four and five of this appeal.

In respect of ground six, the learned trial Judge is faulted for having based his decision on rejecting the appellant's claim on the failure to prove ownership of the motor vehicle.

While resolving this issue the learned trial Judge stated as follows at page 110:-

15 *"In the circumstances where the seller of the vehicle to the plaintiff was not the registered owner and without any evidence of the said Luke Bagala's ownership of the vehicle at any time I find a problem to accept the plaintiff's evidence that he was the owner of motor vehicle Reg. No UAB 671A. The plaintiff has failed to prove that the vehicle at ICD yard was the vehicle used for the job contracted for*  
20 *by the plaintiff under the agreement tendered in evidence."*

The issue of ownership might not have been framed, but it was contested by the respondent in his written statement of defence and the appellant replied to it. The trial Judge was right to resolve it since it was in contention. The plaint does not specifically plead the fact that the appellant was not the registered owner of the  
25 motor vehicle in question. It does not provide the nexus between the motor vehicle and the appellant and since the fact of ownership had not been well pleaded as to link the vehicle to the appellant the Judge was justified to find that ownership had not been proved. We find no reason to fault him. We find no merit in this ground of appeal.

5 Ground 7 is in respect of costs. Costs are awarded to the successful party. The respondent was the successful at the trial and we find that the learned trial Judge was justified when he awarded costs to the respondent at the trial.

This appeal fails and is hereby dismissed. No order is made as to costs since the respondent was served with the hearing notice at their last known address but  
10 failed to turn-up for the hearing of this appeal.

Dated at Kampala this 11<sup>th</sup> day of June 2019.

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.....  
**Kenneth Kakuru**  
**JUSTICE OF APPEAL**

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.....  
**Geoffrey Kiryabwire**  
**JUSTICE OF APPEAL**

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.....  
**Cheborion Barishaki**  
**JUSTICE OF APPEAL**

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(3) We would award Ug.shs. 20 million as general damages to the first respondent in respect of the counterclaim with interest at Court rate from date of the High Court Judgment.

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(4) We order that the first respondent pays to the appellant Ug.shs. 70 million being money had and received with interest at 18 percent per annum from date of filing the suit until payment in full less payments set out in paragraph 3 above.

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(5) We order that the appellant pays  $\frac{2}{3}$  of the costs of this appeal and the High Court.

We so order.

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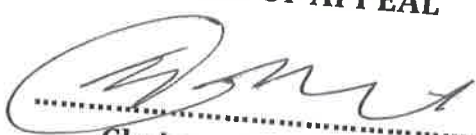
Dated at Kampala this 11<sup>th</sup> day of June 2019.

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Kenneth Kakuru  
JUSTICE OF APPEAL

  
Geoffrey Kiryabwire  
JUSTICE OF APPEAL

30

  
Christopher Madrama  
JUSTICE OF APPEAL