THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

COURT OF APPEAL NO. 35 OF 2010

ROBERT BAGALA ..... APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY..... RESPONDENT

[An appeal from the Judgment /order of Hon. Justice J. B Katutsi dated 30th January 2009 at Kampala arising from High Court Suit No 0533 of 2001]

CORAM : Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Ezekiel Muhanguzi, JA

Hon. Lady Justice Percy Night Tuhaise, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

The background to this appeal has been ably set out in the Judgment of my learned sister Hon. Lady Justice Percy Night Tuhaise, JA and I have found no reason to reproduce it here.

I agree with the Judgment of my learned sister Hon. Lady Justice Percy Night Tuhaise, in as far as she has evaluated the evidence, reproduced the submissions of Counsel and stated the law regarding the power of this Court as a first appellate Court.

However, I have a different view as to the law applicable to the facts of this appeal. The respondent is a statutory body established by an Act of Parliament (CAP 196) long title of which is set out as follows:-

"An act to establish Uganda Revenue Authority as a central body for the assessment and collection of specified revenue, to administer and enforce the laws relating to such revenue and to provide for related matters."

The appellant an importer and tax payer had his goods held by the respondent on suspicion that he had not paid the requisite taxes and was in effect trying to smuggle goods into the Country through Entebbe International Airport. Subsequent to the investigations it was ascertained that he had paid the taxes and was entitled to have his goods released. However, Uganda Revenue Authority the respondent was unable to do so as the goods apparently had been lost whilst in it's custody.

This in my humble view is that this was not a case of a bailee for reward. The goods in question belonging to the appellant having been placed in the hands of the respondent by operation of the law, the respondent became a bailee by operation of the law. This is also referred to as constructive bailment. Under this arrangement the goods are held at the instance of the bailee and the bailor derives no benefit from this arrangement. A constructive bailment is a creation of peculiar circumstances which are not contractual. It is implied by law.

Where the goods of the bailor while in possession of a constructive bailee are lost or damaged by an event for which a third party is responsible, the bailee has the responsibility to recover the damages from the third party but will hold the damages recovered as a trustee for the bailor. See: *The Winkfield [1902] ALL E.R P.346.* The bailee also can insure the bailor's goods and has an insurable interest in the goods. If the goods are lost or damaged, he/she will hold the insurance sum as a trustee for the bailor See:- *A Tomlinson (Hauliers) Ltd vs Hepburn [1966] A.C 451.*

The bailee is under a duty to take reasonable care of the goods bailed. The standard of care required of a bailee (whether gratuitous or otherwise) is the standard demanded by the circumstances of each particular case. As the burden is on a bailee

to show that there has been no negligence, if he fails to return goods or returns them in a damaged condition it is for him to show that the loss or damage occurred in spite of the fact that he took reasonable care of them. It follows that if the cause or the circumstances of loss or damage to goods are unexplained by a bailee, the bailor's claim against him will succeed as the bailee has failed to discharge the burden of proving that this was not due to his negligence (Houghland v R.R. Low (Luxury Coaches) Ltd. [1962] 1 Q.B. 694). For example, if the loss or damage is due to act of God or to robbery with violence, a bailee is not liable, but it is the bailee who has to prove that this was the cause of the loss or damage. If the article bailed is stolen the employee of a bailee, the latter will be liable if he did not use reasonable care in selecting his employee. See: *Williams v. Curzon Syndicate ltd (1919) 35 T.L.R. 475*, or if he omitted to lock up the article bailed while locking up similar articles of his own. See: *Clarke v. Earnshaw (1818) Gow 30. See* also: *Charlesworth's Mercantile Law 13th Ed, London P.372.*

The bailee must exercise a degree of care with regard to the property commensurate with the benefit he derives from the arrangement. *United Farm Family Ins. Co. v. Riverside Auto Sales, 753 N.E.2d 681,685 [Indiana Court of Appeal] USA 2001*. A bailee is required to use only "slight care" when a bailment is for the sole benefit of the bailor, "great care" when the bailment is for the sole benefit of the bailee, and "ordinary care" when the bailment is for both parties' mutual benefit. *See*: *Pitman, 2nd Ed at P.631*. When the evidence shows that the bailee received the property in good condition but it was returned damaged or not returned at all, an inference is raised that the bailee failed to exercise the appropriate degree of care. Once this inference of negligence is created, evidential burden shifts to the bailee to produce evidence tending to prove the damage, or theft occurred without his fault or neglect. The determination of a bailee's compliance with the applicable standard

of care is a matter of fact and would as such have to be proved on a balance of probabilities at the trial.

In the case from which this appeal arises the respondent took possession of the appellant's goods pending tax clearance on 18th April 2011. The respondent issued a *"Notice of goods deposited in customs warehouse'* receipt, indicating that, it received 35 pieces of mobile phones at Entebbe international Airport. Overleaf the receipt was hand written inscription *"Do not clear without getting clearance from Ag. P. Ro'*.

On 19th April 2011 when the appellant went to clear his phones and take possession of them he was told that they could not be traced. No explanation was given as to how they got lost. The respondent concedes that they received the appellant's goods and the same were lost whilst in their custody. From the authorities cited above the evidential burden at that point shifted to the respondents once they conceded that the goods in issue had been lost in their custody.

No plausible explanation was offered by the respondent in their pleadings or evidence as to how the goods had been lost. The fact that the goods could have been lost through acts of the respondent's employee is no defence to the claim. The respondent's evidence and contention that the goods were stolen by the appellant with the connivance of one of the respondent's employees is quite unconvincing to say the least. On its own it would not constitute a valid defence.

I accordingly find that, the respondent was liable for the loss of the appellant's goods and I hold so. The appellant is entitled to both special and general damages. The value of the goods is not in dispute as it was never challenged. I would award shs. 10,550,000/= as special damages being that value of the goods at the time they were delivered to the respondent.

I would award the appellant shs 1,000,000/= as general damages.

In the result I would allow this appeal and make the following order

1) Special damages 10,550,000/=

2) General damages 1,000,000/=

3) Interest on item 1 (special damages) at 15 percent per annum from date of filing the suit at the High Court until payment in full.

4) Interest at 6 percent per annum on item 2 (general damages) from date of the Judgment of the High Court until payment in full

5) Costs of this suit at the High Court and at this Court.

As Muhanguzi JA, also agrees it is so ordered,

Dated at **Kampala** this ....5TH.....day of ....November....2019.

.....

Kenneth Kakuru

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 35 OF 2010

ROBERT BAGALA.....APPELLANT

VRSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

(An Appeal from the Judgment/Order of Hon. J.B Katutsi dated 30th January, 2009 at Kampala arising from High Court Suit No. 0533 of 2001)

Coram: Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Ezekiel Muhanguzi, JA

Hon. Lady Justice Percy Night Tuhaise, JA

JUDGMENT OF EZEKIEL MUHANAGUZI, JA

I have had the benefit of reading in draft the Judgment prepared by my learned brother Hon. Mr. Justice Kenneth Kakuru, JA.

I agree with his analysis, reasons and orders. I have nothing more useful to add.

Dated at Kampala this.....5th.....day of.....Nov.....2019.

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Ezekiel Muhanguzi
Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL IN UGANDA AT KAMPALA

Coram: Kakuru, Muhanguzi, & Tuhaise, JJA

Civil Appeal No. 35 of 2010

Arising from High Court Civil Suit No. 0533 of 2001

Robert Bagala.....Appellant

Versus

Uganda Revenue Authority.....Respondent

[Appeal from the judgement/order of Katutsi J, dated 30th January 2009 at Kampala]

Judgement of Percy Night Tuhaise, JA

The appellant in this appeal was plaintiff in Civil Suit No. 533 of 2001 where he filed a suit against the respondent (then defendant) for recovery of 35 pieces of mobile phones or Uganda Shillings 10,550,000/= (ten million five hundred and fifty million) the equivalent value of the phones, general damages, interest and costs. The High Court dismissed the suit with costs hence the instant appeal.

Background to the appeal

On or about the 18th day of April 2001, the appellant arrived at Entebbe Airport aboard Flight No. KQ 416 from Nairobi with 35 pieces (sets) of mobile phones of different types namely five (5) pieces of Nokia 3310, twenty one (21) pieces of Nokia 3210 and nine (9) pieces of Siemens C25 all valued at Uganda

Shillings 10,555,000/=(ten million five hundred and fifty million).

The appellant deposited the said phones with the respondent's Principal Revenue Officer one Wilson Kamwesigye for safe custody in the respondent's warehouse at Entebbe Airport pending clearance of taxes. He was given a deposit Form F.89 (exhibit P.1) with specific instructions that the said phones would only be released to the appellant upon clearance of taxes with the respondent.

On 19th April 2001, the appellant went back to pay the taxes and have his phones cleared from the respondent's warehouse, but he was told that the phones could not be traced. The appellant wrote to the Commissioner Customs & Excise through his lawyers demanding for his phones or compensation for the value of the lost phones, but the respondent did not meet the demand.

The appellant then filed Civil Suit No. 533 of 2001 in the High Court at Kampala against the respondent for recovery of the 35 pieces of mobile phones or Uganda Shillings 10,555,000/= (ten million five hundred and fifty million) the equivalent value of the phones, general damages, interest and costs. The respondent contended that the appellant duly received his goods and was therefore stopped from claiming them or their value. On 30/01/2009 the High Court dismissed the suit with costs hence the instant appeal, on the following grounds:-

> "1. That the trial Judge erred in law and fact in holding that the defendant was not liable for the loss of the

plaintiff's mobile phones deposited for safe custody in the defendant's warehouse.

2. That the learned trial Judge erred in law and fact in failing to properly evaluate overwhelming evidence with regard to the defendant's duty as the bailee of the lost phones.

3. That the learned trial Judge erred in law and fact when he held that the plaintiff was not entitled to any compensation from the defendant for the phones stolen from the defendant's house."

The appellant prayed that this Court sets aside the judgement of the High Court dated 30th January 2009 and allow the appeal with costs to him.

Representation

The appellant was represented by Mr. Muhimbura Paul. The respondent was represented by Mr. Davis Lomuria.

Learned counsel for both sides prayed for and were granted courts leave to have the conferencing notes on record adopted as their respective submissions.

Submissions for the Appellant

On ground 1, learned Counsel for the appellant submitted that it was an agreed fact that the appellant imported mobile phones which he deposited with the respondent's warehouse at Entebbe pending clearance taxes as shown in exhibit P1. He referred this Court to page 108 of the record of appeal where the learned trial Judge held that each case must be decided on

its facts; that it is not disputed the plaintiff's phones were deposited in the defendant's warehouse where they were lost; that to support an action of this nature negligence must be proved; that the plaintiff does not say that the defendant's warehouse was not a place of security.

The appellant's counsel submitted that the appellant did not only plead negligence at pages 5, 6 and 7 of the record of appeal, but also led evidence to prove that it was the respondent's lack of duty of care that led to the loss of the appellant's phones, and for which the learned trial Judge ought to have found the respondent, as a bailee, liable to compensate the appellant for the loss.

Counsel submitted that the learned trial Judge's reliance on **Kettle Vibra Msali (1783)** 118, where Willes J held that it was a good plea if the defendant was robbed of the goods delivered to him to take care of them was in effect suggesting the respondent does not take any responsibility for goods deposited in its warehouse under its own direction, and once lost, a plea of theft of the property is a shield to the respondent.

Counsel cited **Trago (U) Ltd V Notay Engineering Industries HCCS No. 63/1998** which quotes with approval the case of **Dodd V Nanha [1971] EA 58** where general principles applicable to the bailor and bailee relationship were enunciated. He submitted that there was no dispute as to whether the appellant entrusted his goods into the safe custody of the respondent's warehouse at Entebbe pending

clearance by the appellant, and that **DW1** is on record having conceded the bailment of the phones.

Counsel also cited **Coggs V Bernad [1703] 92 ER 107** to support his arguments on the duty of care. He contended that the burden is on the respondent (URA) to prove that it met its duty of care which in this case it did not. Counsel submitted that the deposit of the appellant's goods with the respondent created a contractual relationship between the appellant and the respondent, the respondent being the bailee while the appellant was bailor. He contended that the bailee had the duty to ensure safety of the appellant's mobile phones as long as the phones remained in its (respondent's) custody. He submitted that this was not addressed by the learned trial Judge.

Counsel further contended that the receipt of the goods from the respondent's warehouse was clearly defined in exhibit P1. He argued that when the appellant presented exhibit P1 to clear his goods with the respondent he was told the phones could not be traced. He submitted that, as bailee, the respondent had a duty of care to keep safe goods deposited at its warehouse, and the respondent's failure to observe this duty of care led to the appellant's loss of the goods for which the respondent should be held wholly responsible.

Counsel submitted for the appellant that the court's finding that exhibit P1 contained a disclaimer *"goods deposited at owner's risk"* was not logical in so far as the appellant did not have an option to deposit with the respondent; that he was directed by the respondent to deposit to it pending clearance.

Counsel argued that it would be precarious to suggest that the respondent that is funded by tax payers' money to run and manage security of the warehouse should not take responsibility for items officially deposited with it as held by the learned trial Judge. He concluded that the learned trial Judge erred in law and fact when he found that "theft" of mobile phones from the respondent's warehouse was a good plea to the appellant's claims.

On grounds 2 and 3, learned counsel for the appellant, who decided to argue them together, submitted that the respondent relied on police statement made by Nassejje Josephine (Exhibit D1) allegedly to prove that one Florence Bogere and the appellant conspired to steal the phones from the respondent's warehouse at Entebbe. He referred to page 106 of the record where the learned trial Judge held that the plaintiff was a man of shoddy character and a crook who intended the phones be smuggled out of the airport though the evidence tendered by the defendant fell short of the standard of proof required. Counsel submitted that the Subscriber Data Call Record from MTN (U) LTD submitted to court by the respondent for identification of the appellant was weak evidence in that neither an officer from MTN nor Nassejje Josephine were called as witnesses to testify in court and prove that the appellant was involved in the alleged theft.

Counsel argued that to create a nexus, the respondent ought to have furnished evidence to prove that Florence Bogere was convicted of the alleged theft or loss of the phones from the respondent's warehouse at Entebbe or at all. He argued that

even if the said Florence Bogere had been convicted, since she was an employee of the respondent in the course of her employment, the respondent would still be held vicariously liable.

Counsel submitted that whereas the learned trial Judge rightly found that the respondent failed to link the appellant to the loss of the phones from the respondent's warehouse, it was clearly erroneous for him to hold as he did that the appellant is "a man of shoddy character" which influenced him to reach a wrong conclusion. He argued that the learned trial Judge relied on extraneous matters to attach evidential value to exhibit P1 and IDI which this court was prayed to appraise.

Counsel submitted that the thrust of the evidence by DW2 and DW3 was that the appellant deposited his goods with the respondent's warehouse. It did not in any way show that the respondent did not have any duty of care or that the responsibility to keep the phones safe rested on the appellant.

Counsel also submitted that the learned trial Judge ignored the authorities he cited, which would have guided court on the duties of the respondent as a bailee of the lost phones.

Submissions for the Respondent

On ground 1, the respondent's counsel submitted that there was no dispute as to the fact that the appellant imported mobile phones which he deposited with the respondent's warehouse at Entebbe pending clearance of taxes. He referred this Court to page 108 of the record of appeal where the

learned trial Judge held that it is trite law that each case must be decided on its own peculiar facts.

Counsel submitted that it is clear the appellant did not plead negligence at all, and that whereas the appellant stated that the respondent had a duty of care toward the appellant's phones, it certainly failed to prove to court the assertion that the respondent had failed to discharge such duty. He argued that the learned trial Judge rightly cited **Dansey V Richardson (1854)3 E & B 144** which is key on the law relating to bailment, where Chief Justice Cambell stated, among other things, that when a question arises as to the liability of the bailee, for the loss of the thing bailed, it is to be determined by the degree of care required from the bailee, and the degree of negligence from which the loss arose; and that the question is not whether negligence is imputed personally to the bailee or his servants, within the scope of their employment.

Counsel further submitted that the learned trial Judge relied on **Lord Kenyon** dictum in **Fanucane V Small (1795) 1ESP 3H** where the Judge stated that to support an action of this nature, positive negligence must be proved, that the evidence in the case was that the goods were lodged in a place of security and where things of value were kept. Counsel argued that it was on basis of the foregoing that the learned trial Judge rightly cited with affirmation the case of **Kettle Vibra** (supra) where Willes J stated that if the defendant was robbed of the goods that is a good plea.

Counsel submitted that at all times, the appellant neither doubted that the respondent's warehouse was a place of

security nor did he dispute the fact that the said facility was always used to keep goods of value. Further, Counsel argued that the appellant was not only reluctant to assert that the degree of duty of care paid by the respondents to his goods was less than that paid to others, but he also failed to prove positive negligence on the part of the respondent, which was a cardinal facet in apportioning liability in bailment cases, as held by the learned trial Judge.

Counsel submitted that the learned trial Judge's holding was not to mean that the respondent does not take any responsibility for the goods deposited in its warehouse. Instead it only affirmed the point of law well enumerated in the authorities on bailment, that for the bailee to be held liable for the loss of such bailed goods, there is a requirement on the plaintiff to prove negligence on the part of the bailee, and that the degree of care given to the plaintiff's goods was less than that given to other valuables kept under the bailee's custody.

Counsel contended that consequently, there was nothing in the instant case that could show failure to take reasonable care of the goods by the respondent, as was held by the learned trial Judge.

On grounds 1 and 2, the respondent's counsel submitted that at trial the respondent relied on, among others, the Police Statement made by Nassejje Josephine (exhibit P1) to prove to court that the appellant conspired with Florence Bogere to steal the phones from the respondent's warehouse at Entebbe. He argued that exhibit P1 was quite clear and

elaborate, and could not point to anything more than the fact that the appellant and Florence Bogere knew each other and conspired to ensure that the phones were stolen from the respondent's warehouse.

Counsel further submitted that in such cases of theft, it is important to consider the character of the accused on top of the evidence submitted. He argued that the appellant does not at all dispute the fact that at the airport, he had knowingly given the polythene bag containing the mobile phones to another person to help him carry them through the Green Channel (which is for persons carrying items of no customs value to declare to customs) for the sole purpose of evading the payment of taxes on the said mobile phones. Counsel submitted that as such, coupled with the evidence on record, it was correct for the learned trial Judge to concur with the respondents that indeed the appellant is a man of shoddy character capable of using others to do unlawful acts for the purpose of evading taxes.

Counsel further submitted that to corroborate the evidence in exhibit P1, the respondent submitted to court a Subscriber Data Record from MTN (U) LTD which showed that numerous phone calls were made between Florence Bogere's phone number and that of the appellant, especially on the material day of the theft. He submitted that needless to state, there was no greater need to have any MTN official testify to the theft, since the call records of the material days and time were undisputed in total agreement with exhibit P1. Counsel submitted that the said evidence was quite sufficient to prove

the nexus between the appellant and the said Florence Bogere, with whom they masterminded the theft of phones from the respondent.

Counsel concluded that the learned trial Judge correctly evaluated the evidence on the record together with the relevant authorities to arrive at the conclusion that the respondent was not liable for the loss of the mobile phones. He prayed this Court to find merit and uphold the judgement of the trial court and dismiss the appeal with costs.

Resolution of the appeal

On a first appeal, this Court is required to re-evaluate the evidence and the law and reach its own findings pursuant to rule 30 (1) of the Judicature (Court of Appeal Rules) Directions 2005. Also see **Fr. Narcensio Begumisa &Others V Eric Tibebaaga, Supreme Court Civil Suit No. 17/2002, [2004] UGSC 18.**

Ground 1

Regarding the learned trial Judge's finding that the plaintiff does not say that the defendant's warehouse was not a place of security, the appellant's contention is that he did not only plead negligence at pages 5, 6 and 7 of the record but also led evidence to prove that it was the respondent's lack of duty of care that led to the loss of the appellant's phones and for which the learned trial Judge ought to have found the respondent, as a bailee, liable to compensate the appellant for the loss. The respondent's contention was that the appellant did not plead negligence at all.

The record shows, however, that the plaintiff pleaded negligence in paragraphs 5 and 6 of the plaint (page 6 of the record of appeal). The plaintiff's counsel also submitted that the loss of the phones was due to the negligence of the defendant (page 92 of the record of appeal). There is nowhere in the record however where it is revealed that the appellant (plaintiff) adduced evidence of negligence against the respondent (defendant).

The record reveals that the plaintiff mainly based his case and arguments along a bailee/bailor relationship. The appellant's counsel cited **Trago (U) Ltd V Notay Engineering Industries HCCS No. 63/1998** which quotes with approval the case of **Dodd V Nanha [1971] EA 58** where general principles applicable to the bailor and bailee relationship are enunciated as follows;

a) That a bailee is bound to take reasonable care of the chattel according to the circumstances,
b) That upon loss or damage, the burden is on the bailee to prove that he has met his duty of care,
c) That a request that the bailor keeps his own insurance in effect against fire and theft is inadequate to exempt the bailee from liability for loss or theft.

On duty of care expected of a bailee, the decision in **Coggs V Bernad [1703] 92 ER 107** pronounced the duty of care as follows:-

> *"A custodian for reward is bound to use due care and diligence and preserving the article entrusted to him on behalf of the bailor. The standard of care and diligence*

imposed on him is higher than that required of a gratuitous depository, and must be the care and diligence which a careful and vigilant man would exercise in the custody of his own chattels of a similar description and character in similar circumstances."

The learned trial Judge, on the existence of a bailee/bailor relationship, stated on page 108 of the record of appeal as follows:-

"...it is trite law that each case must be decided on its own peculiar facts. In this case, it is not disputed that the plaintiff's phones were deposited with the defendant's warehouse, where they were lost. To support an action of this nature positive negligence must be proved. The plaintiff does not say that the defendant's warehouse was not a place of security."

Thus, whereas the appellant pleaded that the respondent had a duty of care toward the appellant's phones as a bailee, he apparently failed to prove to court that the respondent had failed to discharge such duty. The learned trial Judge rightly cited **Dansey V Richardson (1854)3 E & B 144** which is key on the law relating to bailment, where Chief Justice Cambell stated, among other things, that when a question arises as to the liability of the bailee, for the loss of the thing bailed, it is to be determined by the degree of care required from the bailee, and the degree of negligence from which the loss arose; and that the question is not whether negligence is imputed personally to the bailee or his servants, within the scope of their employment.

The learned trial Judge further cited and relied on **Lord Kenyon** dictum in **Fanucane V Small (1795) 1ESP 3H** where the Judge stated that to support an action of this nature, positive negligence must be proved, that the evidence in the case was that the goods were lodged in a place of security and where things of value were kept.

It was on the basis of the foregoing that the learned trial Judge rightly cited with affirmation the case of **Kettle Vibra** (supra) where Willes J stated;

> *"...But the goods were delivered to the defendant to take care of them as his own proper goods etc if he robbed of them that is a good plea."*

The record does not reveal at any one time that the appellant doubted the respondent's warehouse as a place of security, nor did the appellant dispute the fact that the said facility was always used to keep goods of value. Further, the appellant was not only reluctant to assert that the degree of duty of care paid by the respondents to his goods was less than that paid to others, but also failed to prove positive negligence on the part of the respondent, which was a cardinal facet in apportioning liability in bailment cases.

I therefore agree with the respondent's counsel's submissions that the learned trial Judge rightly and thoroughly evaluated the evidence on the record, to which he applied the relevant authorities on the law of bailment, to hold that the defendant was not liable for the loss.

The appellant's counsel submitted that the learned trial Judge's reliance on **Msali (1783)** where Willes J held that it was a good plea if the defendant was robbed of the goods delivered to him to take care of them, was, in effect, suggesting that the respondent does not take any responsibility for goods deposited in its warehouse under its own direction, and once lost, a plea of theft of the property is a shield to the respondent. To the contrary, as correctly argued by the respondent's counsel, the learned trial Judge's decision only affirms the point of law well enumerated in the authorities on bailment, that for the bailee to be held liable for the loss of such bailed goods, there is a requirement on the plaintiff to prove negligence on the part of the bailee, and that the degree of care given to the plaintiff's goods was less than that given to other valuables kept under the bailee's custody.

In the instant appeal, the record clearly shows that the appellant (plaintiff) failed to prove not only negligence on the bailee (defendant) but also that the degree of care given to the plaintiff's goods by the bailee was less than that given to other valuables kept under the bailee's custody.

For reasons stated above ground 1 of this appeal fails.

Grounds 2 and 3

The learned trial Judge observed in his judgement on page 106 of the record of appeal that the defendant attempted to lead evidence to show that the plaintiff had a hand into the disappearance of the phones. He stated as follows:-

> *"There is no doubt the plaintiff is a man of shoddy character. It does not need much learning to see that on the 18th April 2001 he intended the phones to be smuggled out of the airport. He is a crook!* ***But the evidence tendered by the defendants fell short of the standard of proof required."*** (emphasis added).

The appellant's counsel's submission is that it was clearly erroneous for the learned trial Judge to hold as he did that the appellant is "a man of shoddy character" which influenced him to reach a wrong conclusion. According to counsel, the learned trial Judge relied on extraneous matters to attach evidential value to exhibit P1 and IDI which this Court was indulged by the appellant to appraise. This was opposed by the respondent's counsel who maintained that the learned trial Judge relied on exhibit P1 when making his findings.

With respect to the submissions of both counsel, the record clearly shows that, much as the learned trial Judge analyzed the evidence on the attempts by the appellant to smuggle the phones out of the airport and the evidence of theft and conspiracy, he did not rely on the said evidence to make his decision. The record reveals that after his analysis of such evidence, he stated that the evidence tendered by the defendants fell short of the standard of proof required.

The evidence on record also shows that the learned trial Judge referred to the fact that, in his submissions, the plaintiff wanted to treat the case as that of bailor and bailee. The learned trial Judge then went at great length to discuss and apply the law on bailor/bailee relationships, starting with a

statement that to support an action of this nature, positive negligence must be proved. He finally came to the decision that the defendant (respondent) was not liable for the loss of the plaintiff's phones because the appellant had not adduced evidence of negligence against the defendant. This decision was clearly not based on the respondent's allegations of theft and conspiracy on the part of the plaintiff.

Looking at the evidence on record in totality, I find nothing to show that the appellant at any one time brought before the trial court any evidence to show that the defendant's (respondent's) warehouse was not a place of security. It is apparent from the record that the learned trial Judge's decision only affirms the point of law well enumerated in the authorities on bailment, that for the bailee to be held liable for the loss of such bailed goods, there is a requirement on the plaintiff to prove negligence on the part of the bailee, and that the degree of care given to the plaintiff's goods was less than that given to other valuables kept under the bailee's custody.

In my considered opinion, the learned trial Judge rightly evaluated the evidence adduced before court, and addressed the relevant authorities to arrive to arrive at the conclusion that the respondent was not liable for the loss of the mobile phones. It was on this basis that the learned trial Judge held that the plaintiff was not entitled to any compensation from the defendant for the phones stolen from the defendant's house.

Thus, based on my foregoing analysis of evidence and authorities cited, grounds 2 and 3 of this appeal fail.

In the result, I find no merit in this appeal. I would dismiss it with costs to the respondent in this court and in the High Court.

Dated at Kampala this...5th.....day of.....Nov.....2019.

Percy Night Tuhaise

Justice of Appeal