

**THE REPUBLIC OF UGANDA,**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**

**HCT – 00 – CC – CS – 137 – 2010**

**MOSES MAGALA & COMPANY}..... PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL}..... DEFENDANT**

**BEFORE HON. JUSTICE CHRISTOPHER MADRAMA**

**JUDGMENT**

The Plaintiff's action against the Defendant as disclosed in the pleadings is for detention of goods or detainee, an order for the return and delivery of original samples or arts works delivered to the Ministry of Foreign Affairs, special damages, general damages and costs. The Plaintiff's case is that, he specialises in art and literary works for the local and export markets. Between 2006 and 2007 while preparing for CHOGM, the CHOGM secretariat invited bid for the supply of the best gift to the Queen, and other innovative products and supplies. The Plaintiff in response to the invitation delivered to the Ministry of Foreign Affairs original samples of several art works worth \$ 10,000. The Ministry of Foreign Affairs received the items but the Plaintiff's bid to supply the items was unsuccessful. On the 30<sup>th</sup> September 2009, the Plaintiff demanded the return of his original samples but the Ministry of Foreign Affairs failed, neglected or refused to do so. The Plaintiff avers that as a result of the neglect, refusal or failure to return his samples, he missed opportunities to offer/exhibit the same to other potential buyers and thereby suffered loss.

The written statement of defence denies the averments in the plaint and contends that the Plaintiff's claim for **Ushs 89,837,100/=** is unsubstantiated and ought to be dismissed.

At the hearing the Plaintiff was represented by Counsel Paul Byaruhanga while the Attorney General was represented by Counsels Irene Baiga State Attorney and later Counsel Daniel Gantungo State Attorney.

The Plaintiff called on witness Mr. Moses Magala, PW1 and the Defendant also called one witness Mr. Kagole Kivumbi formerly Director of Media and Publicity/Spokesperson of the Commonwealth Heads of State and Government Meeting.

The testimony of PW1 is that the Plaintiff is a crafts exporters and a bundle of export licenses for the years 2004-2009 were exhibited as Exhibit P1. In preparation for CHOGM, the Ministry of Foreign Affairs invited different types of supplies including art and crafts. The Plaintiff had researched for a period of 16 years for a unique art/craft suitable for the Queen as a state gift and delivered its original unique innovative samples to the Ministry. The delivery note (Exhibit P2) dated 10/10/2007 issued by the Plaintiff and addressed to Ministry of Foreign Affairs CHOGM 7<sup>th</sup> Secretariat Media and Publicity CHOGM Committee was signed for by a Secretary in the office of Mr. Kagole Kivumbi's office. PW1 testified that he delivered the items himself on 13/10/2007. He delivered samples of the CHOGM book on culture and tourism in diversity for the CHOGM guests and the queen, a unique innovation of the African puzzle which is the Plaintiff's 16<sup>th</sup> year research innovation, table African puzzle, the sketch map for the state gift for the Queen which is one of the first African wonders of the world; the moving palace, a sample of the Africa map puzzle with soft and hard copies about culture and tourism, CHOGM tyres covers which had to have the gift, the photo of the queen and the Ugandan President, a handkerchief which was supposed to have the photograph of the Queen, a DVD documentary on culture and tourism, a 100% cotton T/shirt and unique craft gifts for the Common Wealth guests. The value of the tourism book was 30\$ targeted towards each of the 4000 guests that were coming, the value of the DVD was USD \$ 50, the Africa map puzzle was USD 200 for the queen, the Africa map puzzles, soft and hard copies were USD 1000s, the state gift to the Queen was 10,000 pounds, the tyre covers were 60 dollars, the handkerchief was 1 dollar and it was targeted towards every Ugandan in commemoration of CHOGM for remembrance, and targeted about 30 million people, t/shirts were 10 dollars for 4,000 guests and the assorted commonwealth gifts were 10,000 dollars.

Mr. Magala testified that originals were unique innovations that were not anywhere on planet earth, and the Plaintiff owned the copyright thereof. The Plaintiff expected to secure contracts to supply volumes of these items to the CHOGM incoming guests but did not get the contracts due to lack of funds. The Plaintiff offered to supply the items on credit but this offer was likewise declined. The Plaintiff demanded for his samples back both verbally and in writing as in Exhibit P3 but the samples were never returned. PW1 saw the samples again at the Ministry of Foreign Affairs when he was invited for dialogue on the claim with one Oluka a representative from the Ministry of Justice. Some of the Plaintiff's samples were in the Chief Executive Director's office/CHOGM at the Ministry of Foreign Affairs offices in Kampala. These samples were presumably still with the Defendant's agents. Refusal or failure to return the Plaintiffs items has cost the Plaintiff in lost opportunities, for exhibiting the same worldwide, in France, South Africa.

In cross examination PW1 testified that upon invitation to the public the Plaintiff made several products and wrote to the Ministry in a letter dated 2<sup>nd</sup> November 2006 Exhibit D1 to which Ministry replied and through that reply, the Plaintiff started co-operation with the Ministry. The delivery note dated 10<sup>th</sup> October 2007 was received by the Ministry of Foreign affairs CHOGM 2007 Secretariat on 13<sup>th</sup> of October 2007. However from the signature one cannot tell who received the delivery note. PW1 emphasised that he delivered the samples himself and the delivery note was signed in his presence by a lady/secretary to Mr. Kagole Kivumbi. He acknowledged that the delivery note was not stamped. Furthermore when the Plaintiff delivered the samples, some of the items delivered were unique and new and therefore the Plaintiff does not have other samples.

The testimony of DW1 Mr. Expedito Kagole Kivumbi is that between May 2006 and December 2007, he was the Director Media and Publicity/Spokesperson of the CHOGM National Task Force, charged with liaising with the public and publicizing CHOGM and its activities. He wrote a letter exhibit D6 on the eve of the CHOGM activities replying to the Plaintiff's letter written a day before, seeking financial help. In that reply there was no reference to any samples allegedly delivered at the Media and Publicity Directorate of CHOGM by the Plaintiff. He testified that exhibit D6 gives the full extent of any dealing that they ever had with the Plaintiff. Moreover the delivery note does not bear the official stamp of the Ministry of Foreign Affairs nor does it show

any connection to the CHOGM secretariat, and the Media and Publicity office neither received nor dealt with samples from the Plaintiff as alleged. The CHOGM secretariat never received any bids from the public for the supply of any artefacts, such as those the Plaintiff alleges to have supplied.

In cross examination, DW1 testified that he did not recall having been consulted before the defence was drawn, and that his witness statement was based on 2 letters written by him and he was asked to explain the circumstances in which he wrote these letters. The work of the committee was on media and publicity only and it was not within their mandate to look at samples or any other thing like gifts. At one point the Plaintiff wrote a letter talking about money he replied that it was not possible because the committee did not budget for a proposal of that magnitude.

Counsels filed written submissions in which the following issues were addressed.

1. Whether the Plaintiff supplied the items claimed to the Ministry of foreign affairs?
2. Whether the Defendant liable?
3. Remedies

### **Whether the Plaintiff supplied the items claimed to the Ministry of Foreign Affairs**

Learned Counsel for the Plaintiff submitted that PW1 testified that he personally delivered the items of the samples claimed. The issue was not whether the supply was solicited, but whether there was a supply. For the tort of detinue to be established it does not matter how the possession was gained. All the Plaintiff is required to prove is delivery by him and retention by the Defendant. Solicitation by the Defendant is not a requirement. Counsel relied on “Winfield on Tort 9<sup>th</sup> Edition page 417 in support of his submission. The WSD and DW 1 in his testimony only generally denied solicitation but DW1 evasively admitted his interview with the New Vision Newspaper in their issue of 9.1.2007 inviting the general public to make supplies for the purpose of CHOGM Counsel asked court to read Section 80 of the Evidence Act.

Counsel submitted lack of a stamp on the delivery note is not an answer to the Plaintiff’s claim because DW1 distanced himself from the committee on protocol and events, which was the committee concerned, and the said committee was not called by the Defendant to testify.

Furthermore, DW1 did not search the records of the Ministry concerning the issue before court. He did not participate in the preparation of the WSD and the Defendant has not shown where it got the material for its defence. Counsel for the Plaintiff further submitted that DW1, being a lone witness, does not constitute a compurgator, because for compurgation many witnesses are required to swear to the innocence of the Defendant relied on the definition of compurgation in Osborne's Concise Law Dictionary, 10<sup>th</sup> Edition page 100. He submitted that the Defendant's methodology of receipt (stamping) as put to PW1 and asserted by DW1 is not universal, PW1's testimony that the items are still lying with the Defendant's agencies and that he and Mr. Oluka of the Defendant saw them together is unchallenged, because PW1 testified that while he and Mr. Oluka of the Ministry of Justice were at the Ministry of Foreign Affairs he was recognized and was told "your things are here", and this testimony stands uncontroverted. Exhibit D1 is proof that the Plaintiff had dealings with CHOGM and the Ministry of Foreign Affairs at a high level. Exhibit D6 on the other hand distorts facts because PW1's testimony is that he had requested to be allowed to supply his products on the strength of a local purchase order and guarantee if there were no funds. AW1 did not produce the letter allegedly requesting for financial help. Counsel for the Plaintiff submitted that the Plaintiff has on the balance of probabilities proved issue No. 1.

In reply Counsel for the Defendant submitted that it was proved by the Defendant that there was no solicitation for the items, the basis of the Plaintiff's claims and therefore, the Defendant did not need any such items from the Plaintiff. Had there been solicitation, there would have been clearly stated channels on how to deliver the items to the Defendant. Counsel submitted that the Plaintiff presented annexure P2, a delivery note dated 10<sup>th</sup> October, 2007 as evidence that it delivered the said items to the Ministry of Foreign Affairs, but the destination address on this delivery note is; "Ministry of Foreign Affairs CHOGM 2007 Secretariat, Media and Publicity CHOGM Committee". The document was received by an unknown person whom PW1 failed to identify in court. PW1 failed to explain to court why there is no official stamp of the Ministry of Foreign Affairs on the delivery note. All other letters PW1 delivered to the Ministry of Foreign Affairs were duly stamped as received. The question to be determined is why such an important document evidencing delivery of items was received anonymously and the Plaintiff did not insist

on an official stamp as prove of delivery? The only answer to that question is that no such items were actually delivered as alleged. DW1 as the head of the Committee of Media and Publicity Committee was the right person to whom the items ought to have been delivered. DW1 however categorically denies that his office ever received such items. Secondly the committee that should have handled matters relating to the items in issue should have been the Committee on Protocol and Events. PW1 never claimed to have dealt with any other Committee of CHOGM apart from that of Media and publicity which the DW1 headed.

Counsel agreed that it is true that DW1 distanced himself from the committee on Protocol and events, but this does not prejudice the Defendant, as the Plaintiff did not claim to have dealt with any other committee of CHOGM other than that of Media and Publicity, and there was no need to call other committees to testify about things where nothing had been alleged against them.

The Plaintiff tried to rely on a newspaper article which was never admitted in evidence, and although the Plaintiff cross-examined DW1 on it, it was never exhibited. Even if it is properly in evidence, the contents of that newspaper talk about a "State Gift to the Queen" but this does not mean that DW1 was referring to the Plaintiffs items. Furthermore, that DW1 clearly explained to court the context in which he gave that interview, and that he did not have any particular person in mind. There were no items supplied to Ministry of foreign affairs by the Plaintiff because; PW1 claims to have dealt with the committee of Media and Publicity which committee was not mandated to receive such items, Exhibit P2, a delivery note has an address of Media and Publicity as the destination of the samples, but DW1 denied that his office ever received such items, Exhibit P2 was received by an anonymous person whose signature could neither be identified by PW1 nor by DW1 as belonging to one who had worked in his office, and Exhibit P2 did not have an official stamp of the Ministry of Foreign Affairs as all other correspondences PW1 presented, and therefore, this court can never be sure that these items were received by Ministry of Foreign Affairs.

Defendant's Counsel further submitted that DW1 does not deny dealing with the Plaintiff but clearly sets out the parameters of these dealings in Exhibit D6. The existence of the Plaintiffs items are highly doubted as the PW1 never presented any description, sample or details of these items in Court claiming that he was incapable of making any without the samples that were

taken, and therefore, the court can not conclude that the Plaintiff ever had such items referred to as ‘samples’ in the first place when he was incapable of making others.

In rejoinder, Counsel for the Plaintiff submitted that the newspaper need not be exhibited like a document because it is an authority receivable on record and section 80 of the Evidence Act caters for it.

### **1. Whether the Defendant is liable**

On the question of whether the Defendant was liable the Plaintiff’s Counsel submitted that the CHOGM arrangements were made by the Government of Uganda, and DW1 testified that in the CHOGM 2007 National Task Force, there was a committee to handle the kind of supply the Plaintiff is litigating about. Consequently issue No. 1 is answered in the affirmative and the Attorney General was sued in his representative capacity under section 10 of the **Government Proceedings Act**. In reply the Defendants Counsel contended that there was no evidence of delivery of the items alleged to any of the Defendant’s servants, and the Defendant cannot be liable.

### **2. Remedies**

The Plaintiff’s submission on this issue is that he has proved that the goods in question are in the possession of the Defendant and the Plaintiff is entitled to immediate possession. There was a demand for restoration and failure on the part of the Defendant to comply entitling the Plaintiff to reliefs sought in the plaint.

In reply Counsel for the Defendant submitted that the Plaintiff failed to prove that there are any goods in the possession of the Defendant and there was nothing for the Defendant to return. Alternatively should the court find the Defendant liable, the Plaintiff is not entitled to the prayer for special damages because it is trite law that Special Damages must be specifically pleaded and specifically proved (see **Uganda Telecom Versus Tanzanite Corporation (2005) E.A 351**). Though the items claimed were specifically pleaded there was no specific proof of any of them. Secondly the Plaintiff did not present any evidence on the cost of the said items and there was no valuation report regarding the cost of these items which were not on open market. Furthermore, PW1 claimed to be an acclaimed exporter of such items, but he did not present evidence of how

much he was selling each item, and all he said was that all the items had never been made before and had never been sold anywhere before, and this therefore means there was no known market value for them. It followed that the figures which the Plaintiff attached to the items were arbitrary. PW1 also claimed to have a patent to the said unique items, but instead he presented copyright booklets and showing clearly that there was nothing unique about the said items, if at all they existed, which warranted them to be patented, and they were therefore not priceless as claimed.

In relation to the general damages, the Defendants Counsel submitted that this prayer is highly speculative, because the Plaintiff assumes he should have earned a lot of money if he had exhibited these items in France and South Africa, but PW1 failed to give a convincing explanation why more items could not be made for exhibition in those countries if at all such exhibitions did exist. Counsel for the Defendant submitted that the Plaintiff did not give any evidence to guide Court on how much it had earned from previous exhibitions so that it can justify 15million dollars as claimed and therefore, the court should reject the prayer for general damages because the Plaintiff clearly did not suffer any loss.

In rejoinder, Counsel for the Plaintiff submitted that with regard to the pricing of items, the Plaintiff is the maker of the items and priced them and the Defendant did not adduce evidence to contradict the pricing, and such evidence cannot be adduced by way of submissions. Furthermore, a valuer's report is neither a legal requirement nor was it raised during the trial, and how the Plaintiff came up with the figures is a question being raised in submissions but was never an issue during the trial. In relation to the patents or copyrights of the Plaintiff, the certificates of copyright were received as defence exhibits and therefore, it is not correct for the Defendant to submit that the Plaintiff claimed to have patents and was required to tender them.

With regard to the general damages, there was sufficient material on court record for assessment of general damages.

## **Judgment**

I have carefully considered the evidence on record, the pleadings and submissions of learned Counsels for the Plaintiff and Defendant. The Plaintiff's cause of action is in detinue or detention of goods and for recovery of property or its value, general damages and costs.



The facts of the suit have been sufficiently summarised at the beginning of this judgment. The major defence of the Attorney General to the action hinges on questions of fact as to **whether the Plaintiff did at all deliver art and literary works as alleged in the plaint to the agents of the Defendant.** This has been handled as issue number one in the address of Counsels. Secondly, if at all the Plaintiff did deliver those items, whether their value is as stated in the testimony of PW1.

According to **Stroud's Judicial Dictionary of Words and Phrases** 2000 edition, "detinue" also generally phrased as "detention of goods" is:

"An action "that lies against him who having goods and chattels delivered to him to keep, refuses to re-deliver them."

According to Winfield and Jolowicz in the book Winfield on Tort 9<sup>th</sup> Edition cited by Plaintiff's counsel (supra) at page 418, the Plaintiff must prove that he is entitled to immediate possession of the chattel and in case of any defect in his right to immediate possession, the action must fail. Secondly the Plaintiff must prove that the Defendant had detained the chattel after the proper demand had been made for its restoration. From the authorities it is essential for the Plaintiff to prove that he delivered the chattels to the Defendant. Secondly he has to prove that he made a demand for the chattels and the Defendant refused to deliver them to him. From the evidence on record the question of title to the chattels does not arise. So the question of fact for determination is whether the Plaintiff did deliver items to the Defendant's agents and what kind of chattels they were if at all they were delivered.

It is the testimony of PW1 that he delivered the chattels to the Ministry of foreign affairs and he relied on delivery note exhibit P2. Exhibit P2 is entitled "Delivery note" and is on the letterhead of Moses Magala and Company Limited. The delivery note is addressed to the Ministry of Foreign Affairs CHOGM 2007 Secretariat Media and Publicity, CHOGM Committee. The delivery note reads as follows:

1. Sample of an innovative CHOGM book on culture and tourism promotion in Africa, Commonwealth countries and the world over entitled "discover the closure of African culture and tourism in Uganda. The great and Africa. First edition of its kind, intended for

CHOGM and part of the state and company gifts to the Queen unique and new in the universe.

2. Sample of the African map puzzle wonder a multifunctional art piece as a table decoration for the Queen's table, Presidents, resident representatives, ministers, diplomats, CEOs etc. Wall hanging and or puzzle or education instrument to Ugandans, Africans, Commonwealth countries and universities in African study departments all over the world.
3. Sketch map of the state gift for the Queen, the unique innovation of the first moving house and first African wonder of the world. It is movable and habitable with A – Z all African attire with an African restaurant with only African foods, African art gallery with or African art and crafts, and African musical theatre all promoting African culture and tourism worldwide.
4. Sample of the African map puzzle with both soft and hard copies or books about Africa.
5. Sample of the CHOGM tyre covers to have the Queen's photo, the Secretary-General and the host President to commemorate CHOGM in Uganda and exportable and others only list samples not provided out of the thirteen products.

The delivery note is purportedly signed as received on 13 February 2007. It does not indicate who signed the delivery note, neither does it show the designation of the person who signed. Additionally it is the Attorney General's contention that it does not bear a received stamp of the Ministry of Foreign Affairs. PW1 was cross examined on exhibit P2. In his examination in chief PW1 testified that the delivery note is dated 10<sup>th</sup> of October 2007 and addressed to the Ministry of Foreign Affairs Seventh Secretariat Media and Publicity CHOGM Committee. That it was signed by the Secretary of Mr Kagole Kivumbi's office. He testified that it was received on 13 October 2007. On cross examination by the State Attorney PW1 to the question put to him as to whether the delivery note was not dated 13<sup>th</sup> of February 2007 stated that it cannot be February because it was written on October 10, 2007. Secondly, on cross-examination as to who actually received the delivery note, PW1 testified strongly that he was the one who delivered it and it was signed by the secretary. He indicated that she was a lady secretary of Mr Kagole Kivumbi. On the question whether the samples he delivered were actually samples he emphasised that they were "original samples". He agreed that they were samples.

I have carefully scrutinised the “received” writing endorsed by signature on exhibit P2 and the date that is written on it. Careful scrutiny of exhibit P2 shows the date of the receipt is indicated therein as 13/02/07. The copy attached to the plaint has the same problem. The document speaks for itself and varies with the testimony of PW1. This is a glaring anomaly which was sought to be corrected in cross-examination of PW1 by PW1 when he said that it was received on 13 October 2007. Additional documents do not help much in the quest for the truth of delivery of these products. Exhibit P3 is a letter of the Plaintiff signed by PW1 its Chief Executive Director and addressed to the Permanent Secretary Ministry of Foreign Affairs. The letter is dated 30<sup>th</sup> of September 2008 and is captioned "*a request for return of samples supplied*". Paragraphs 3 and 4 reads as follows:

**"It is within your knowledge that during your preparations for the common heads of government meeting (CHOGM) before/during the months of November, 2006 and November 2007 you made invitation of persons that could supply the best gift to the Queen and any other innovative products and services.**

**Moses Magala and company limited availed itself as a potential supplier and supplied you samples of its original works on the subject "African map puzzle" that was supposed to be considered. Unfortunately, its works were never considered for the purpose."**

**As a matter of right, the company is entitled to receive back its works but on several occasions the company has made several demands to your good self to return the above works but you have not done so...."**

It is quite apparent that the request for the return of samples supplied, exhibit P5 dated 30th of September 2008, does not refer to all the samples in exhibit P2 which is the delivery note but refers only to the "African map puzzle". Sample of the African map puzzle is item number 2 in exhibit P2 reproduced above. It is supposed to be a multifunctional art piece as a table decoration. Exhibit P3 which is the request for the return of samples referred to above goes on to write that the company is entitled to the return of the "above works". The "above works" only refers to the "African Map Puzzle". The exhibits of the Defendant namely exhibits D2 – D5 do not help to clarify on what actual exhibits were delivered to the Ministry of Foreign Affairs if at

all. On the other hand it is inconceivable why anybody should ask for return of his items if they had not been delivered at all in the first place. Exhibit P3 which is the letter dated 30th of September 2008 demanding for the return of the samples supplied and addressed to the Permanent Secretary Ministry of Foreign Affairs, is received by the Ministry of Foreign Affairs on 1 October 2008 with a received stamp. Notwithstanding reference to the "African Map Puzzle" the reference line of the letter is a request for several samples in the plural. Notice of intention to sue was filed thereafter on 1 July 2009 almost a year later. Exhibit D5 is a certificate of registration under the Copyright and Neighbouring Rights Act 2006 for the product "Promoting Uganda and Africa into the world". The description of this product is different in exhibit P2 which describes the product as "discover the treasure of African culture and tourism in Uganda, the great and Africa. First edition of its kind." One may say that this was an imperfect description of the works which was subsequently described for purposes of registration under the Copyright and Neighbouring Rights Act 2006. Secondly exhibit D4 is a separate registration of copyright for the title of the work "First Culture and Tourism CHOGM Book Kampala – Uganda 2007." In the delivery note exhibit P2 this is bundled up with exhibit D5 as one sample. Exhibit D3 is a copyright registration for "African puzzle". In exhibit P2 which is the delivery note it is described as "the African map puzzle". Finally exhibit D2 is a registration under the Copyright and Neighbouring Rights Act 2006 for the title of work "state gift for the queen". In exhibit P2 the delivery note, it is described as "sketch map for the state gift for the queen, the unique innovation of the first moving house and first African wonder of the world." There was no attempt to clarify or explain the differences in description of the art works and literary works and the differences were not brought out in the examination in chief or cross examination of PW 1. Different descriptions of the sample however may not be fatal because it may not be evidence of lying. Other evidence of dealing between the Plaintiff Company and the Ministry of Foreign Affairs may have to be examined.

Additionally, the Defendant exhibited documents which give the timelines as to the dealings between the Plaintiff and the Defendants servants/agents namely Ministry of Foreign Affairs. The first correspondence is exhibited D1. Exhibit D1 is a letter dated November 2, 2006 written by The Deputy Head of the Public Service/Secretary for Administrative Reform and Executive Director, CHOGM 2007 Secretariat. It is addressed to the acting Permanent Secretary Ministry

of Foreign Affairs and copied to the Chief Executive Director of the Plaintiff company and is entitled "State Gift to the Queen during her visit to Uganda in 2007". The letter reads as follows:

**"Attached to this publication is a copy of the letter from Mr Moses Magala Semakula on the above mentioned subject.**

**You are requested to ask the protocol, hospitality, events and immigration subcommittee to consider the proposal and advise Mr Magala Semakula, as appropriate. By copy of this communication, Mr Magala Semakula is requested to liaise with you directly for further guidance on his submission."**

The letter suggests that prior to November 2, 2006 the Chief Executive Director of the Plaintiff Mr Moses Magala had written a proposal about the state gift to the Queen during her visit to Uganda in 2007. The nature of the proposal is however not indicated and no proposal was exhibited. The letter does not indicate whether samples accompanied the proposal. In his testimony in chief and in the scheduling memorandum the Plaintiff does not indicate at what point in time it handed over the samples. The only fact is that in the period 2006 and 2007 the Secretariat made invitations to the public for the supply of the best gift to the Queen and any other innovative products and supplies.

A comprehensive list of items that were said to have been handed over to the Ministry of Foreign Affairs appears in exhibit P4 which is a notice of intention to sue the Attorney General. The Plaintiff lists nine items that were handed over in the notice of intention to sue. The notice of intention to sue is dated 25<sup>th</sup> of June 2009. In the plaint paragraph 4 (c) the Plaintiff does not indicate when the items were delivered. In the plaint the Plaintiff sought to rely on exhibit P2 which is the delivery note dated 10<sup>th</sup> of October 2007 with the anomaly that the items were received on 13 February 2007. The anomaly is explained away by PW 1's testimony that it could have been a mistake of the person receiving.

Additionally, DW 1 testified that he did not know the signature on exhibit P2. It is the Plaintiff's testimony through PW1 that the signature belongs to the secretary of DW 1 Mr Kagole Kivumbi. DW 1 testified that he was not an employee of the Ministry of Foreign Affairs but worked in the CHOGM Secretariat. As far as the delivery note exhibit P2 is concerned, on being cross – examined on his witness statement that it was not stamped, he testified that correspondence was

received in the registry and then channelled to the respective offices. DW 1 worked as head of the Committee on Media and Publicity and testified that there could be other committees which dealt with samples. Furthermore there was a committee of gifts within the National Task Force. He admitted that he talked about a gift book to the Queen in an interview with the New Vision newspaper. He testified that the State House Controller was the accounting officer for the book and he did not have the details neither could he confirm whether the book belonged to the Plaintiff. He knew that a local publishing company was going to make it but could not confirm whether it was the Plaintiff. As far as samples are concerned he testified that the accounting officer of State House Comptroller would be the right person to give the answers. He restricted his testimony to the reply he wrote to Moses Magala replying to his proposal and his letter which addressed financial matters.

In conclusion there is no certain documentary proof of the dates/date when the Plaintiff handed over the sample/s to the Ministry of Foreign Affairs. Secondly, the Plaintiff did not deem it fit to call as a witness the person who signed the delivery note exhibit P2. In the circumstances the only evidence available is that of the Plaintiff in his oral testimony. This evidence could not be directly contradicted through a witness with the necessary knowledge. It is only highly probable that the Plaintiff supplied some samples to the Ministry of Foreign Affairs in his bid to supply some literary and art works for the Commonwealth Heads of State and Government Meeting 2007. DW1 Mr Kagole Kivumbi, the only witness of the Defendant did not rule out the question of fact that some items of the Plaintiff were at the Ministry of Foreign Affairs headquarters in Kampala though he could neither confirm nor disprove the Plaintiffs claim. In the premises, issue number one succeeds to the extent that the Plaintiff has proved on the balance of probabilities that he delivered some samples of literary works and art pieces to the Ministry of Foreign Affairs in a bid to supply the sampled items during the Commonwealth Heads of State and Government Meeting 2007 held in Kampala.

### **Whether the Defendant is liable**

On this issue learned Counsel relied on section 10 of the Government Proceedings Act for the submission that the Attorney General was sued in his representative capacity for the Commonwealth Heads of State and Government meeting arrangements which was the

responsibility of the state of Uganda. He contended that Mr Kagole Kivumbi DW1 admitted that there was a National Task Force to handle the kind of supply the Plaintiff was litigating about. On the other hand learned Counsel for the Attorney General submitted that there was no evidence that any items were delivered by the Plaintiff to any of the Defendants servants. There is however no controversy about the doctrine of detinue or detention of goods the Plaintiff relies on.

As earlier on stated, the defence of the Attorney General is on a point of fact. However in as much as a lot of effort was made to disprove exhibit P 2, there is evidence that there was correspondence between the Plaintiff's executive director and the Ministry of Foreign Affairs. There is a higher probability that the Plaintiff supplied samples to the Ministry to backup his bid which was a logical thing to do. Additionally the Plaintiff proved that he made a demand for his sampled items but the servants of the Defendant did not oblige by returning the items to the Plaintiff. In the circumstances, the Plaintiff's samples are being kept without consent and the Defendant is liable for the tort of detention of goods/detinue.

## **Remedies**

It is the evidence of the Plaintiff that it delivered samples of its products. It is further pleaded that the samples have been copyrighted. The Defendant produced a certificate of registration of the samples. In cross-examination PW1 admitted that he handed over original samples to the servants of the Defendant. A sample in ordinary parlance means a representation of other products of similar design or characteristics or quality. Additionally exhibits D5, D4, D3 and D2 are certificates of registration of the Plaintiff's products under the Copyright and Neighbouring Rights Act 2006. The effective date of registration of the certificates is 29 April 2009.

Exhibit D5 is registration number 7 of 2009 issued by the registrar of copyright for the title of work "Promoting Uganda and Africa into the world." The name of the producer is Moses Magala and Company Limited. It shows that the product was created on 1 January 2006 and was first registered on 17 April 2009. The next certificate of registration is exhibit D4 and the registration number 6 of 2009 with the effective date of registration is 29 April 2009. It is for the work "First Counter and Tourism CHOGM Book Kampala Uganda 2007". The year of creation is 1st of January 2006 and the author or producer is Moses Magala and company limited. Exhibit D3 was

a registered under registration number 4 of 2009. It concerns the title of the work "the African puzzle". Finally there is exhibit D2 with the registration number five of 2009 for the work "state gift for the Queen". All the works were created in the same year and date by the same authors/producer.

Registration was made under section 43 of the Copyright and Neighbouring Rights Act 2006. Section 43 (4) of the Copyright and Neighbouring Rights Act 2006, provides that "***a piece of work which is creating the right shall be reduced in a material form before the owner of the right can register the right.***" Registration cannot be made until after the product has been deposited with the registrar of copyrights. Section 43 (5) of the Copyright and Neighbouring Rights Act 2006 provides as follows:

**"A copy of the work or contract which is creating the right for registration shall be deposited with the registrar for registration".**

It is quite clear from the above section and it is a presumption of law that the Plaintiff had deposited the samples of the works with the registrar of copyrights as directed by the mandatory provisions of section 43 (5) of the Copyright and Neighbouring Rights Act 2006. Deposit of the works with the registrar of copyrights is further directed by the Copyright and Neighbouring Rights Regulations 2010 which may not have been in force. Regulation 3 (2) (a) provides that the application shall be accompanied by –

**“a deposit consisting of copies of records representing the work for which registration is applied, whether the work is published or unpublished: and”**

The presumption of law is that the Plaintiff had deposited the samples with the registrar of copyrights. It follows that the samples were available for use by the Plaintiff for other purposes. The claim of the Plaintiff that it could not exhibit or promote its products is defeated by the presumption of law on account of registration of the samples' with the registrar of copyrights. The claim for general damages for lost opportunities is therefore disallowed.

It was not proved that the Plaintiff's products were lost. In fact it is the testimony of PW 1, the only witness of the Plaintiff that he saw some items of the Plaintiff at the Ministry of Foreign Affairs headquarters in Kampala when he went there for discussions with an official from the



Ministry of Justice and Constitutional Affairs. According to the textbook authority submitted by the Plaintiff's Counsel on the Law of Tort by Winfield and Jolowicz page 419:

**“At common law a Defendant held liable in detinue was ordered to deliver up the chattel to the Plaintiff or to pay its value as assessed and in either event to pay damages for its detention.”**

Remedy for detention of goods is further emphasized by Evershed J in **Rosenthal v Alderton and Sons Ltd [1946] 1 All ER 583** (Court of Appeal) at page 584,

**“A successful Plaintiff in an action of detinue was, under the old practice, entitled to judgment for the re-delivery of the goods or, in case they were not returned, their value together with damages and costs”**

In the circumstances, the Ministry of Foreign Affairs is hereby ordered to trace/identify and return the items of the Plaintiffs as contained in the particulars in the Plaintiff's notice of intention to sue or the delivery note exhibit P2. The Executive Director of the Plaintiff Mr. Moses Magala shall assist in identifying and tracing the Plaintiff's products at the ministry headquarters.

Additionally, the Plaintiff is entitled to damages. Having concluded that the Plaintiff could have exhibited its products in any part of the world because the Plaintiff is presumed by law to have deposited sample/s thereof with the registrar of copyrights for purposes of registration, the claim for lost opportunity is untenable and stands dismissed. Taking into account the inference from the facts that the Plaintiff could have reproduced several of its other samples apart from the “unique innovation”, and also taking into account that the Plaintiff was not successful in his bid to supply the samples' to the government for the CHOGM 2007 event, the Plaintiff cannot seek damages commensurate with the valuation of the samples. Secondly, there is no independent valuation of the Plaintiff's samples. No evidence was led as to how the Plaintiff priced its items and what it could fetch in the marketplace. The Plaintiff's estimates without evidence are arbitrary and not supported by any empirical data. In any case and theoretically the Plaintiff could have marketed its copyrighted products, which products were registered for protection after he bid for supply of the same for the CHOGM event. The Plaintiffs bid was not successful and could not use the CHOGM event to assess loss of marketing opportunity.

In the above circumstances the court will award reasonable general damages for inconvenience. The Plaintiff is awarded US \$ 15,000 as general damages. The Plaintiff is further awarded interest on the general damages at 12% per annum from the date of judgment till payment in full. The Plaintiff's suit succeeds with costs.

Judgment delivered in open court this 24<sup>th</sup> day of August 2012.

Hon. Mr. Justice Christopher Madrama

Judgment delivered in the presence of:

Kyampeire Jenester holding brief for Byaruhanga Paul Counsel for plaintiff

Plaintiff in court

Defendants not represented.

Charles Okuni Court Clerk

Hon. Mr. Justice Christopher Madrama

24<sup>th</sup> of August, 2012