

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 345 OF 2011**

HAJJ YAHAYA SEKALEGA

T/A SEKALEGA K. Y. ENTERPRISES}.....PLAINTIFF

VS

1. ATTORNEY GENERAL}

2. STANBIC BANK (U) LTD}.....DEFENDANTS

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff filed this action against the Defendants for recovery of a motor vehicle and electronic appliances or their money's worth averred to be unlawfully taken by the Defendant and general damages for causing the said unlawful confiscation of his property and costs of the suit.

The Defendants deny the claims and aver that the Plaintiff's goods were lawfully impounded on suspicion that the Plaintiff had committed an offence and the Plaintiff was prosecuted.

The Plaintiff represented himself while the Attorney General/first Defendant is represented by Imelda Adong State Attorney. The second Defendant was represented by Dr Byamugisha.

In the joint scheduling memorandum duly endorsed by the Plaintiff personally and Counsel for the defence it is agreed that the police impounded and detained the Plaintiff's motor vehicle, a Nissan Mistral registration number UAL 688 S and two air-conditioners appliances acting on a report made by the second Defendant.

The agreed issues for trial are:

1. Whether the first Defendant's agents had lawfully impounded the Plaintiff's motor vehicle and two split air conditioning appliances?
2. If so, whether the first Defendant is liable?
3. Whether the second Defendant caused the unlawful confiscation and/or detention of the Plaintiff's motor vehicle and two split air-conditioners appliances?
4. If so, whether the Plaintiff failed to mitigate his loss?
5. Remedies, if any.

The Plaintiff testified as PW1 and called two other witnesses namely PW2 Mr. Mohammad Lule Chairman Local Council 1 Mbogo Zone and PW3 Mr. Hakim Sejombwe PW3, a resident of Kawempe, Kampala District. The first Defendant did not call any witnesses. The second Defendant called one witness Mr Nicholas Nabende as DW1, the Sales and Relationship Manager in the Leasing Department of the second Defendant bank.

I will refer to the witness testimonies when considering the final address together with the evidence adduced. The Plaintiff filed a two-page written final address, first Defendant also filed a three-page written address and second Defendant filed a four-page written address.

The Plaintiff's case in the written address is that the second Defendant is liable to the Plaintiff for all the property impounded/confiscated since they were picked up by a bank official by the name of Tony Manina who handed it over to the police. He relies on a search certificate exhibit P2. The Plaintiff was arrested at Kawempe Mbogo which was the only address known to the second Defendant. The second Defendant misled the police to forge the trumped up charges according to the electronic e-mail by Stemmet Hentle the head of the relevant department of the second Defendant. DW2 was in Mbale and not in Kampala and could not testify about the arrest and the information he gave the court was hearsay. There were other managers in the Kampala Crested Towers branch of the second Defendant bank who were not called to testify. DW1 testified in the chief magistrate's court

at Buganda road on 25 March 2010 and after an analysis of the testimonies, the court dismissed all charges against the Plaintiff. DW1 did not see the Plaintiff on the seventh day of May 2009 which is the date the Plaintiff was unlawfully arrested on trumped up charges. The first Defendant did not produce any witness in court and the criminal proceedings against the Plaintiff were illegal and in abuse of office.

Both Defendants did not respect the court order of the magistrate which was issued by the Buganda road court dated 20th of May 2009 exhibit P4. The trading licence which was used in the transaction with the bank was from Kawempe division but not Kampala central division. The Plaintiff also had a business account at city branch and the information was available to the Defendant. In the premises the Plaintiff prayed for judgement as averred in the plaint.

For the first Defendant it is submitted that the Plaintiff alleges that on the 17th of May 2009 is vehicle Nissan mistral registration number UAL 668S together with two air-conditioners appliances were impounded by the police pursuant to complaints from Stanbic bank Ltd. These facts were admitted in the joint scheduling memorandum.

On the question of whether the first Defendant's agents unlawfully impounded the Plaintiff's motor vehicle and two split air-conditioners appliances, Counsel relies on section 69 of the Magistrates Courts Act. This section provides for search of the premises of arrested persons and provides that:

"Where a police officer has reason to believe that material evidence can be obtained in connection with an offence for which an arrest has been made or authorised, any police may search the dwelling or place of business of the person so arrested or of the person for whom the warrant of arrest has been issued and may take possession of anything which might reasonably be used as evidence in any criminal proceedings."

Furthermore the Criminal Procedure Code Act provides that the police may search the place entered by a person arrested. It provides under section 3 (1) that:

“If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into or is within any place or residing in or being in charge of that place shall on demand of the person acting under the warrant or such police officer, allow him or her free ingress to the place and afford reasonable facilities for a search in it.”

The Plaintiff was arrested on the 7th of May 2009 and his residence was searched according to exhibit P2. He was subsequently charged with the offence of forgery and uttering false documents and tried in the Chief Magistrate's Court according to exhibit P9. During cross-examination of DW 1, the Plaintiff did not dispute the fact that he drove himself in the vehicle to the police. It is therefore the first Defendant's submission that the property the Plaintiff claims to have been illegally impounded were taken under a legally authorised search which the Plaintiff himself complied with and cannot be referred to as unlawful. Additionally the Plaintiff does not deny that he was charged and tried in court for a criminal offence for which the items were to be used as evidence in the criminal proceedings.

The second issue is whether the first Defendant is liable?

Having submitted that the taking of the property was lawful, the first Defendant's case is that it cannot be found liable for carrying out its duties as provided for under the law.

What remedies are available?

The first respondent submitted that it acted within the law and did not cause the Plaintiff any damages and therefore this suit against the first Defendant should be dismissed with costs.

Submissions of the Second Defendant

Firstly the Plaintiff's submissions bring in facts some of which were not pleaded and others not adduced in evidence. The Plaintiff's case as reflected in paragraph 4 of the plaint is for recovery of the motor vehicle and electronic appliances or

*Decision of Hon. Mr. Justice Christopher Madrama Izama *^*~?+:*

their money's worth unlawfully taken by the Defendants and general damages for causing the unlawful confiscation of the property as well as for costs of the suit. The evidence contained in the Plaintiffs witness statement and that of PW2 and PW3 is insufficient to prove any case against the second Defendant. He alleges in his witness statement that the second respondent pushed for the arrest of the Plaintiff and confiscation of his property as expressed in an e-mail dated 4th of March 2009. However this evidence is untenable in view of the admitted facts in the joint scheduling memorandum that the police impounded and paid the Plaintiffs motor vehicle and two air-conditioners appliances acting on a report made by the second Defendant.

The Plaintiff cannot thereafter claim that the second Defendant pushed for confiscation of his property by the police. As a matter of fact the property was not confiscated and it was taken under a legal search.

Whether the first Defendant's agents unlawfully impounded the Plaintiff's motor vehicle and two split air-conditioners appliances? On this issue the second Defendant's Counsel submitted that it was of no concern to the second Defendant. The second issue of whether the first Defendant is liable is also of no concern to the second Defendant. The third issue of whether the second Defendant caused the unlawful confiscation and/or detention of the Plaintiff's motor vehicle and two split air-conditioners appliances may be addressed. Apart from the agreed facts that it is the police which impounded and detained the Plaintiff's motor vehicle, the Defendants Counsel relies on paragraph 11 of the witness testimony of Nicholas Nabende DW1. Nicholas testified that when on the 7th of May 2009 the second Defendant staff accompanied the police, it was at the request of the police to show them the Plaintiff's home because, after the second Defendant's complaint to the police, police had been looking for the Plaintiff but failed to trace him. On being cross examined he also testified that the Plaintiff drove the vehicle in question to the police himself. Apart from the vehicle, the rest of the property claimed by the Plaintiff was taken under a search and recorded by the police as they arrested the Plaintiffs at his home. The second Defendant's Counsel relies on section 69 of the Magistrate's Court Act quoted

above. Secondly he relies on the Criminal Procedure Code Act and section 3 (1) thereof also quoted above.

The Plaintiff was indeed arrested and charged by the police and that is why he was released on police bond on the 8th of May 2009 according to the document number 9 in the trial bundle. His house had been searched on the 7th of May 2009 according to exhibit P2 which is the search certificate. He was subsequently charged and tried in the court and the charges are reflected in exhibit P9.

The Plaintiff drove himself to the police and the police took away the rest of his property after an authorised search which the Plaintiff himself complied with and the acts cannot be considered "unlawful". Even if the report that the second Defendant gave the police had been unjustified, the independent taking of the Plaintiff's property by the police after a lawful search would not constitute unlawful confiscation and/or detention of the Plaintiff's goods by the second Defendant. In the premises the second Defendant caused no loss or damages to the Plaintiff and the suit against the second Defendant should be dismissed with costs.

Judgment

I have carefully considered the claim of the Plaintiff as reflected in the pleadings as well as the Defendant's various defences.

The facts averred in the plaint are that on the 7th of May 2009 the Plaintiff's vehicle Nissan Mistral registration number UAL 668 S together with two air-conditioner appliances were impounded by the police pursuant to a complaint from Messieurs Stanbic Bank Ltd. It is alleged that Messieurs Stanbic bank Ltd had earlier instituted legal proceedings against the Plaintiff allegedly for breach of contract relating to the supply of digital printing equipment which subject matter was totally different from the impounded items. At the time of impounding the said items civil suit number 185 of 2009 had hardly taken off and was far from being concluded and therefore the police and Stanbic bank Ltd had no right or excuse in impounding the items. On the 21st of May 2009 the Chief Magistrate's Court of Buganda road ordered the Plaintiff's vehicle to be unconditionally

released to the Plaintiff but the police totally disregarded the order in contempt of court. It is alleged that the vehicle had been packed at the CID headquarters in Kibuli since the 7th of May 2009 despite numerous pleas to the first Defendant to have the vehicle released; it was not released leading to loss of profits as the vehicle was the Plaintiff's sole tool of trade. The items have been vandalised while in the custody of the police and lost value for which the Plaintiff ought to be compensated. The Plaintiff further claims that the Defendants have no claim whatsoever on the impounded items and the detention of the goods is unlawful.

The Plaintiff seeks for orders for the recovery of the impounded property namely motor vehicle Nissan Mistral registration number UAL 668 S and two split air-conditioners appliances or the money worth of the property, general damages for causing the unlawful confiscation of the said properties, costs of the suit and any other relief that the honourable court may deem fit to grant. The plaint was filed by the Plaintiff on his own behalf.

Both Defendants deny the claims and aver that the second Defendant lodged a complaint with the police concerning the Plaintiff's failure or refusal to supply and fit all contracted equipment and supplies it had financed under a finance lease for Mark Photo Lab Digital Printing Ltd under circumstances which the second Defendant honestly believed to be criminal. The second Defendant denies that it caused the unlawful confiscation of the motor vehicle, electronic appliances or property of the Plaintiff or that it detained them. Secondly the second Defendant denies allegations of loss by the Plaintiff and avers that the Plaintiff neglected or failed to mitigate his loss or damage.

The first Defendant's defence denies the contents of the Plaintiff's pleadings and avers that the motor vehicle and electronic appliances in question were lawfully confiscated by the police as objects of police investigation. Secondly the Plaintiff is not entitled to the orders and prayers sought in the plaint.

I have additionally considered both the testimonies of the witnesses as well as the documentary evidence and submissions of Counsel.

The first observation to be made is that the Plaintiff who is a layperson represented himself. The pleadings were drawn by the Plaintiff and he represented himself and it was quite apparent that he could not conduct the trial of his suit the same way it would have been conducted by a professional/advocate.

That notwithstanding the Plaintiff's suit is not a commercial dispute but a suit for the tort of unlawful arrest of the Plaintiff and unlawful detention of goods. Issues number 1, 2 and 3 dealt with the question of whether the Defendant's agents unlawfully impounded the Plaintiff's motor vehicle and two split air-conditioners appliances and whether the second Defendant caused the unlawful confiscation or detention of the Plaintiff's motor vehicle and two split air-conditioners appliances.

The Plaintiff adduced exhibit P2 which is a search certificate to search his house on the 7th of May 2009 in Kawempe. As a matter of fact there was no unlawful search of the Plaintiff's premises according to exhibit P2. Several items were recovered during the search and they include two brand-new air-conditioners, the subject matter of this suit as well as other property not the subject matter of this suit. The Plaintiff's vehicle was not included in the items recovered.

I have duly considered the uncontested evidence of PW2 and PW3 who were not cross examined on their written witness testimonies. PW2 Mr Mohammed Lule, the Local Council 1 Chairperson of Mbogo zone Kawempe, testified that on the 7th of May 2009 he was called to witness the searching of the home of somebody namely the Plaintiff. When they reached the place he found many people had gathered thereat. He found someone called Tony Manina around and they insisted on searching the house for something. When they finished searching, they boarded a pickup double cabin to Kawempe police station on the way to CID headquarters. They took two air-conditioners and one Tony Manina had promised to exchange them with those they already had. Then they came back and took the vehicle number UAL 668S Nissan.

PW3 Mr Hakim Sejombwe a resident of Kawempe also testified that on the 7th of May 2009 when he was asleep, he heard people knocking on his door with force. When he came out he was forced by the police to take them to where the Plaintiff was. That Mr Tony Manina was called and when they came they insisted on searching the house because they wanted something. The LC chairperson was called and he came with the one Nicholas. The police and bank officials searched the house. When they finished the work of searching, they boarded a pickup double cabin to Kawempe police station on their way to CID headquarters. From the CID headquarters they proceeded to Jinja road police station driven in a pickup double cabin driven by Tony Manina and accompanied by Nicholas and Mr Mugisha. The detention order was signed by one Mr Wafula. They took two air-conditioners which Tony Manina had promised to exchange with those they had. Then they came back and took motor vehicle UAL 668S Nissan.

At the trial of the action the Plaintiff adduced in evidence proceedings in the Buganda road Chief Magistrate's Court. The evidence adduced by the parties in the joint trial bundle agreed upon includes a release on police bond marked as document 9. The police bond is dated 8th of May 2009. It shows that the Plaintiff was suspected of obtaining money by false pretences. Endorsements on the Police bond document demonstrate that the Plaintiff kept on reporting until 22 June 2009 to the police. The bond was extended to 1 July 2009. Exhibit D9 is the charge sheet signed on 29 September 2009 in which the Plaintiff was charged with forgery and uttering false documents. The Plaintiff was also charged with obtaining money by false pretences. The case was registered as criminal case number 670 of 2009 Uganda versus Ssekalega Kyeyune Yahaya (the Plaintiff). Proceedings terminated on 27 November 2012 with a verdict that the accused had no case to answer and he was acquitted of the charges. Apparently the main case of the second Defendant in the criminal proceeding was that the accused was supposed to deliver a digital photo printer to one of their clients but did not do so. The prosecution closed its case without calling all the material witnesses such as someone from Mark Photo Lab Ltd. Secondly the statement of the Plaintiff with Standard Chartered bank about receiving payment from the second Defendant was not adduced at the trial. The handwriting expert was not called to

testify whether the accused actually signed the alleged forged delivery note. So the delivery notes in question were not produced. The court was constrained to prematurely close the prosecution case after only two witnesses had testified. The chief magistrate ruled that the Plaintiff had no case to answer and acquitted the Plaintiff.

Taking all the facts and circumstances the Plaintiff was arrested when the police was in possession of a search warrant of its premises. Some property was removed from his premises and this has not been disputed by the Attorney General's Counsel. The Attorney General is vicariously liable for police action. However the Attorney General never produced any witnesses to rebut the Plaintiff's allegations about the confiscation of his property.

I agree with the second Defendant's submission that the Defendant was apprehended and some property was removed by the police pursuant to a search warrant. The Plaintiff was subsequently prosecuted. It is not the Plaintiff's case that there was no reasonable or probable cause for his arrest or detention. That would have been a cause of action in tort for unlawful arrest and detention or malicious prosecution. Secondly it is an agreed fact that it is the police which impounded and detained the Plaintiff's motor vehicle and the two air-conditioners appliances acting on a report made by the second Defendant. The ruling before the chief Magistrate's Court confirms that the second Defendant was the complainant. However action was taken by the police who are not bound to follow instructions from anybody other than from the police authorities. The police do not act on instructions of complainants but act on information provided by complainants and concerned persons about the commission of an offence. The only cause of action open to the Plaintiff is in the tort of malicious prosecution which is not the Plaintiff's cause of action in this suit. I have already noted that the Plaintiff's cause of action is in the law of tort and ought to have been filed in the Civil Division of the High Court and not the Commercial Court Division of the High Court.

In the premises no case has been made out against the second Defendant for unlawful detention of the Plaintiff's goods. The suit against the second Defendant is accordingly dismissed with costs.

As far as the first Defendant is concerned there is no evidence to suggest that the police acted unlawfully when they arrested him. What is questionable is whether they lawfully retained his property. The property may have been lawfully seized but there is no evidence anywhere that the property belongs to someone else. The fact that the property was kept with the police is not disputed. The property claimed includes a Nissan Mistral and the logbook thereof is exhibit P1. Secondly it is an admitted fact that two brand-new air-conditioners were seized from the Plaintiff's premises and kept by the police. Thirdly the Plaintiff has proved upon an application made on the 20th of May 2009 it was ordered that the Plaintiff's motor vehicle UAL 668 S Nissan Mistral should be released to him unconditionally. The order for the release was made on the 20th of May 2009. This was after the Plaintiff had been arrested on the 7th of May 2009 and released on police bond. The Plaintiff testified that he served the order on the police headquarters on the 21st of May 2009. However the Plaintiff's motor vehicle was not released to him unconditionally as ordered by the magistrate. The order is exhibit P4.

According to the testimony of PW1 who is also the Plaintiff on the 21st of May 2009 the Chief Magistrate's Court of Buganda road ordered that the vehicle land registration number UAL 668 S is unconditionally released to the Plaintiff from the CID headquarters in Kibuli. The order was disregarded by the police in contempt of court. In the plaint the Plaintiff seeks an order for recovery of the unlawfully impounded property. It is my conclusion that even if the retaining of the property was lawful, the impounding of the vehicle became unlawful when the police were served with an order on the 21st of May 2009 according to exhibit P4. The Plaintiff's action succeeds in so far as the motor vehicle registration number UAL 668 S Nissan Mistral was detained since the 21st of May 2009. It is also clear that the vehicle was not the subject matter of the complaint of the second Defendant or of the search warrant. Detention of the vehicle became unlawful after the court order.

As far as the rest of the property of the Plaintiff is concerned namely the two air-conditioners, the Plaintiff was acquitted on 27 November 2012 and is entitled to a return of his property. Agreed fact number 1 in the joint scheduling memorandum is very explicit about the situation. It is an agreed fact that the police impounded and detained the Plaintiff's vehicle and two air-conditioners appliances acting on a report made by the second Defendant. Facts admitted need not be proved under section 57 of the Evidence Act.

In the premises the Plaintiff's action which is for recovery of a motor vehicle and electronic appliances or their moneys' worth succeeds as against the first Defendant.

Remedies

The Plaintiff did not adduce any evidence about the value of the property. However the logbook of the vehicle indicates that it was registered on 18 February 2009 and that it is a used vehicle. The year of manufacture is 1996. The Plaintiff is the first registered owner in Uganda. The second Defendant never filed a counterclaim against the Plaintiff based on the allegations leading to the arrest, detention and prosecution of the Plaintiff and the impounding of certain equipment which have been proved in evidence. I have carefully considered the evidence in cross examination of PW1 the Plaintiff. The Plaintiff during cross-examination admitted that he was supposed to deliver certain goods to the second Defendant but the transaction was never completed.

I have duly examined the defence exhibits in this regard. According to exhibit D4 being a letter from the second Defendant to the Plaintiff, he had so far delivered two HP Split Cordless Samsung Air-Conditioners and other electronic goods and that the Plaintiff was in breach of an arrangement with the bank/second Defendant. Furthermore they write that the equipment delivered was only worth US\$8500 only. Exhibit D4 was written on 17 April 2009 before the arrest of the Plaintiff.

Exhibit D8 is an application by the Plaintiff in Miscellaneous Application Number 392 of 2009 arising from HCCS Number 185 of 2009 at the Commercial Division of

the High Court. Indeed the applicant/Defendant who is the Plaintiff in this suit sought for unconditional leave to appear and defend the suit. In ground two of the notice of motion the applicant in that application alleged that the HP stabiliser, the cordless remote control device Samsung model V18 and other appliances such as a Dell HDD 250 GP and other accessories worth US\$12,000 were supplied to the second Defendant. In paragraph 5 of the applicant's affidavit in rejoinder which was admitted as exhibit P5, the Plaintiff deposes that because of his arrest and remand in Luzira prison, he spent over a month and was involuntarily prevented from performing the contract as earlier undertaken.

The question of whether the Plaintiff still owes the second Defendant is to be determined in HCCS number 185 of 2009 in which he sought leave to appear and defend a summary suit. Exhibits D1, D3 and D4 demonstrate that the second Defendant was alleging that certain goods were supposed to be delivered to Messieurs Mark Photo Lab Digital Printing Ltd by the Plaintiff which he never did. The outcome of that suit is not the subject matter of this suit which deals with the detention of the property claimed in the plaint. The Plaintiff claims to be the owner of the property and from the search certificate exhibit P2 items recovered from the Plaintiff included two brand-new air-conditioners. From the pleadings however it may be concluded that the two air-conditioners were less than US\$12,000.

There is no clear evidence of the value of the motor vehicle claimed by the Plaintiff as well as the two brand-new air-conditioners. The Plaintiff testified that the motor vehicle had been vandalised where it had been parked at the police.

In the premises the first Defendant who is vicariously liable for the actions of the police will pay the equivalent of a used motor vehicle Nissan Mistral 1996 model diesel engine at current market prices.

Because the Plaintiff was deprived of the use of the vehicle without any justifiable cause, the vehicle not being in any way connected to the transaction of the Plaintiff with the second Defendant, the first Defendant shall pay interest on the

market price of the vehicle from the 21st of May 2009 at the rate of 21% per annum up to the date of judgement.

Secondly the first Defendant shall pay the Plaintiff interest at the rate of 14% per annum from the date of judgement till payment in full.

Thirdly the value of the Nissan Mistral 1996 model, being a used vehicle will be valued at current rates by an independent valuation surveyor to be appointed by the parties at the cost of the first Defendant.

Lastly the two brand-new air-conditioners as described in the search certificate shall be returned to the Plaintiff or their value in money at current market rates paid to him. The Plaintiff is entitled to reasonable interest at 21% on the value of the two brand-new air-conditioners from November 2012 when he was acquitted up to the date of judgement.

The Plaintiff is awarded interest at 14% per from the date of judgement till payment in full on the value of the two brand-new air-conditioners.

Finally the costs of the suit are awarded against the first Defendant.

For the avoidance of doubt the suit of the Plaintiff against the second Defendant stands dismissed with costs.

Judgment delivered the 10th day of October 2014

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Hajj Yahaya Sekalega In court

Defendants not represented.

Charles Okuni: Court Clerk

Decision of Hon. Mr. Justice Christopher Madrama Izama *^*~?+:

Christopher Madrama Izama

Judge

10/10/2014