

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 85 OF 2012

CAPITAL RENTALS

LTD:.....PLAINTIFF

VERSUS

WEATHERFORD SERVICES&RENTALS

LTD:.....DEFENDANT

BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO

JUDGMENT

1. Background:

The Plaintiff, a limited liability company incorporated in Uganda sued the Defendant a foreign limited liability company, which is operating in Uganda for breach of contract, replacement of a motor vehicle, general, specific, exemplary damages and costs of this suit as specifically pleaded in the plaint which was filed in this

1: per Hon. Justice Henry Peter Adonyo: Judgment for breach of contract; October 2014

Honourable Court on the 2nd day of March, 2012. The Defendant denied the plaintiff's claims vide its written statement of defence filed on the 21st day of March, 2012. The Plaintiff made and filed a reply to the statement of defence on the 12th day of April, 2012.

To support its claim, the plaintiff annexed to its pleadings the following;

- i. **Annexure A** - Abstract of particulars of an accident involving a motor vehicle dated 10th October, 2011,
- ii. **Annexure B** - Vehicle Inspection Report - Uganda Police Form 24,
- iii. **Annexure C** - Inspection, Assessment and Valuation Report of motor vehicle Toyota Land cruiser registration No. UAN 08W,
- iv. **Annexure D** - Receipt No. 133 acknowledging money received from M/s Capital Rentals by M/s OSI International Consultants for Shs. 500,000/=,
- v. **Annexure E** - A General Receipt No. y 0407323 of the Uganda Government issued by Uganda Police Force to M/s Capital rentals in respect of an Accident report TAR 19/011 for Shs. 78,000/=,

- vi. **Annexure F** - A receipt No. 448 dated 29/09/2011 issued by Julius Matovu Motor Spares in respect of Motor vehicle UAN 089W in respect of break down for Shs. 400,000/=,
- vii. **Annexure G** - A receipt No. 088 issued by M/ Ssali .J. Motor Garage to M/s Capital rentals in respect of a car loader service for Shs. 600,000/=
- viii. **Annexure F** - A receipt No. 090 issued by M/ Ssali .J. Motor Garage to M/s Capital rentals in respect of a car parking for period Nov, Dec, Jan, Feb. for Shs. 400,000/=.

The plaint did include a summary of evidence based on four clear points to wit that the Defendant hired the Plaintiff's motor vehicle; the motor vehicle was severely damaged while in the hands of the Defendant, the Defendant was in breach of contract and the Defendant was liable in special, general and exemplary damages to the Plaintiff.

The Plaintiff's list of witnesses included Jason Asselstine, Peace Sophia Asselstine, Moses Iga, Inspector of Motor Vehicles Hoima, District Traffic Police officer Buliisa and other witnesses with leave of court.

The lists of authorities proposed by the Plaintiff included;

- i. The Contracts Act, 2010,
- ii. The Civil Procedure Act, Cap. 71,
- iii. The Civil Procedure Rules, SI 71-1,
- iv. The Evidence Act ,Cap.6,
- v. The Principles of common law and equity,
- vi. Case Law, and
- vii. Other authorities with leave of court.

The defence in its written statement of defence, proposed in its summary of evidence that at the trial the defendant would produce evidence to show that the vehicle was in the control of the plaintiff's driver, that one Kigula Edwin Geoffrey who was alleged to have driven and then crashed the car was not an employee or agent of the Defendant and was not known to the defendant.

The Defendant's list of witnesses included Abby Bill Matoon, Monakali Nziwamashiya, Lee Macgreg, Willem Van Kirk and others with leave of court.

The defendant's list of documents included;

- i. Agreement between the Plaintiff and the Defendant,

- ii. Others with leave of court.

The Defendant's list of authorities included;

- i. Cheshire and Fifoot on the law of Contract,
- ii. Others with leave of Court.

2. Brief Facts:

The case of the Plaintiff is that on the 17th day of September, 2011, the Defendant hired its motor vehicle Toyota, Land Cruiser, station wagon, Reg. No. UAN 089W, at a daily charge of USD 70 (United States Dollars Seventy only) in Kampala through an oral, open-ended agreement made between the Plaintiff and the Defendant with no specific duration. That the said motor vehicle was handed over to the Defendant at the Defendant's head office at Ntinda Industrial Area in Kampala with a driver as requested by the Defendant. Later the Defendant directed the motor vehicle to proceed to Buliisa District to carry out duties of transporting its staff where it had work.

That on the 21st day of September, 2011, one Kigula Edwin Geoffrey drove the motor vehicle from the Defendant parking lot in Buliisa drove it and later the vehicle got involved in an accident ending up being extensively damaged beyond repair and it was

eventually written off. The Plaintiff then asked the Defendant to make good the loss of the motor vehicle but the Defendant is said to have ignored the request leading to the Plaintiff filing this suit against Defendant for breach of contract, replacement of the motor vehicle, special, general and punitive damages, interest and costs of the suit.

The Defendant generally denied that it was responsible for the accident in Buliisa which led to the writing off of the said motor stating that since the said motor vehicle was in the control of the Plaintiff's driver one Musa Yiga and one Kigula got access it's keys and drove the car away, then it was done with the full knowledge, authority and consent of the said driver who was the lawful agent of the Plaintiff and so the Defendant could not be held liable for the acts of the Plaintiff's driver negligence. The defendant even denied knowledge of the said Kigula as being its agent.

3. Disputed facts:

At the scheduling, the following two facts were disputed;

- (a) Whether the Defendant was in possession of the Plaintiff's motor vehicle Toyota Land Cruiser Reg. No.UAN 089W at the time of the accident.

(b) Whether The Defendant is in breach of contract

4. Representations:

The Plaintiff was represented by M/s Tuhimbise and Co. Advocates, while the Defendants were represented by M/s Sebalu & Lule Advocates.

5. Plaintiff's Exhibits:

During the trial, the Plaintiff exhibited the following;

- i. P.1 - Motor Vehicle Registration Book No. URA/LB 695189,
- ii. P.2 - Receipts No. 090 issued by M/ Ssali .J. Motor Garage to M/s Capital rentals in respect of a car parking for period Nov, Dec, Jan, Feb. for Shs. 400,000/=, P.3 - Receipt No. 133 acknowledging money received from M/s Capital Rentals by M/s OSI International Consultants for Shs. 500,000/=, a General Receipt No. y 0407323 of the Uganda Government issued by Uganda Police Force to M/s Capital rentals in respect of an Accident report TAR 19/011 for Shs. 78,000/= and A receipt No. 448 dated 29/09/2011 issued by Julius Matovu Motor Spares in

- respect of Motor vehicle UAN 089W in respect of break down for Shs. 400,000/=,
- iii. P.3 - Police form 37 - Abstract of particulars of an accident involving a motor vehicle,
 - iv. P.4 - Police Book 24 - Vehicle inspection Report,
 - v. P.5 - Valuation / Surveying Report by Osi International,
 - vi. P.6- Contract of employment of one Kalemera Henry Ochaki,
 - vii. P.7 - Qualification records for Ochwo Ochieng Ojomoko

The Defendant exhibited the following;

- i. D. 1 - Academic transcript of Ochwo Ochieng Ojomoko,
- ii. D. 2 - Judgment of Hon. Mr. Ruby Aweri Opio in Sheema Cooperative Ranching Society & 31 others v. Attorney General HCCS No. 103 of 2010,
- iii. D. 3 - Surveyors Registration Board -Public Notice showing list of surveyors for licensed for 2014,
- iv. D. 4 - Car Rental Contract

6. Issues:

Four issues were formulated for resolution based on the disputed facts earlier alluded to as below;

- a. Whether the Defendant was in possession of the Plaintiff's motor vehicle, Toyota Land Cruiser, Reg. No. UAN 089W at the time of the accident.
- b. Whether the Defendant is in breach of contract.
- c. Whether Kigula Edwin who was driving the vehicle at the time of the accident was an agent of the Defendant for whom the Defendant is vicariously liable.
- d. What are the remedies?

The issues are discussed and resolved below.

7. Whether the Defendant was in possession of the Plaintiff's Motor Vehicle at the time of the accident

The parties generally agree on most facts surrounding this matter but dispute the two facts which are to the effect of whether the Defendant was in possession of the Plaintiff's motor vehicle Toyota, Land Cruiser, Reg. No. UAN 089W at the time of the accident and whether the Defendant was in breach of any contract.

From the two disputed issues are the outstanding matters of possession and breach of contract which contested and need to be resolved. I will discuss and resolve them separately as below.

a. Possession:

The Plaintiff states that the Defendant hired their motor vehicle and the said motor vehicle was delivered to the Defendant's premises at Ntinda Industrial Area, Kampala with its driver. That from Ntinda Industrial Area the motor vehicle together with its driver was directed to Buliisa District where the Defendant had its business operations and there it got involved in an accident and was eventually written off. It is the Plaintiff's contention that from it delivered over the said motor vehicle with its driver to the Defendant, the Defendant took full control of it and was at all material times in charge of its movement and custody, all this construing possession by the Defendant even at the time it got involved in the accident.

The Defendant does not deny hiring the said motor vehicle from the Plaintiff with its driver as alluded to by the Plaintiff but states that according to the motor vehicle hire contract terms and conditions, the motor vehicle was at all times and even at the time it got involved in the accident was in the possession of the Plaintiff and therefore it has no liability for its eventual destruction following the driving of it by one Edwin Kigula from where it had

been parked in Buliisa District. Essentially these two points are diverse forming the crux of this matter before me.

The contest between the two parties before me is on the issue of possession of the motor vehicle at the time when it got involved in the accident which resulted in its being written off. On the one hand the Plaintiff states that it was the Defendant who had possession and relied on the definition in the holding in the case of **Fulgence Mungereza & Anor versus Ponsiano Lwakataka & Anor HCMA No. 217 Of 201** which quotes **Black's Law Dictionary, 7th Edition By Bryan A. Garner at page 1183** to mean *the fact of having or holding property in ones power or the right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object.*

That in accordance with the above definition when applied to the instant matter which have the ingredients of the Defendant having hired the Plaintiff's motor vehicle with a driver in Kampala and the said motor vehicle having been delivered to the Defendant's head office at Ntinda in Kampala, thence from there on the motor vehicle was in the possession of the Defendant.

That whatever happened thereafter including the instructing of the driver to take the motor vehicle to Buliisa district where the Defendant carried out its business operations and the thereafter used for transporting the Defendant's personnel from the camp where they stayed to the field and back and to other places as directed by the Defendant's officials and other instructions given to the driver like always to leave the motor vehicle ignition keys in the motor vehicle whenever it was parked and its eventual being driven from where it was parked by a camp manager and its getting involved in an accident where all ingredients of the fact of possession.

So with all these sequence of events the Plaintiff's submitted that this Honorable Court should find that the said motor vehicle was at all times in the custody and control and or possession of the Defendant on the basis of a contract of bailment and hence falling within the meaning definition of **Section 88** of the **Contracts Act, 2010** which provides thus;

“A contract of bailment to mean the delivery of goods by one person to another for some purpose upon a contract that the goods shall when the purpose is accomplished is

returned or disposed of according to the direction of the person who delivered them with the same Section defining a “bailee” as a person to whom the goods are delivered”.

On the basis of this definition, it was the view of the Plaintiff that the contract between it and the Defendant ought to be as being at fours with the meaning given by the court in the case of **Monday Eliab versus Attorney General SCCA No. 16 of 2012** where it was held that;

“...A contract of hire of a vehicle is a contract by which the hirer obtains the right to use the chattel hired in return for the payment to the owner of the price of hiring”

That this holding should be read together with the provisions of **Section 92** of the **Contracts Act 2010** which placed upon a bailee the duty to take as much care of the goods bailed to him or her as a person of ordinary prudence would of the bailed goods and had the duty to return it to the owner in the condition which it had been bailed with the Supreme Court in the said case going further to hold that that *“the hirer must return the hired chattel at the expiration of the agreed term ... notwithstanding that the task*

of returning the chattel has become more difficult or costly as a result of some unexpected event occurring independently of the hirer's negligence..."

The plaintiff therefore stated that since the original possession was lawful based on a contract between the parties and the Defendant had the powers of bailment over the motor vehicle, then it was the duty of the Defendant to keep and deliver it to the Plaintiff upon the conclusion of the contract in the same state of condition as it had been delivered physically and mechanically and non performance of the same conferring the Plaintiff with a right to seek for compensation as the contract would have been violated.

To reinforce this position, the Plaintiff avers that the testimonies of PW1, PW2, PW3 and PW4 and even those of DW1 and DW2 clearly proved that there existed a contract between the parties and by the time the motor vehicle was driven off the camp premises by one Edwin Kigula it was in the control of the Defendant.

The Plaintiff further averred that the Defendant who had control of the motor vehicle was negligent in its duties towards the

Plaintiff in that it did not take precautions to ensure that the vehicle did not get driven by unauthorized persons or even after the accident, it did not remain on the roadside without mitigating the loss hence all pointing to the culpability on the Defendant's side which falls squarely within the holding in the case of **Stephen Wakida versus Violet Edith Nkata Lugumba & Anor HCCS No. 31 of 2004** where it was held that a breaching party was obliged to remedy the situation where it acted negligently.

The Defendant, however, through its witness DW1 denies culpability or that it did any act of negligence. It avers that it had ensured that the motor vehicle was secure when it was parked at the parking of Tullow Oil but for one Edwin Kigula taking it upon himself to drive the motor vehicle away. This driving away, the defendant avers was not within its control since the camp was not belonging to it but to Tullow Oil. When viewed critically, it is apparent that by stating this, the Defendant was shifting the responsibility of the security of the vehicle to Tullow Oil, a third party. It is true however that the Defendant accepts that it hired the motor vehicle from the Plaintiff and it is also true that it

directed the motor vehicle was by the directions of the defendant sent to Buliisa where it was to be put to use. It's going to Buliisa and its usage was by the directions of the Defendant. it seems to me that by the time this vehicle was handed over to the Defendant by the Plaintiff, then its usage and safe custody could only be under the control of the Defendant and not the Plaintiff and so its parking at a third party's camp could not shift the ultimate knowledge or control of the Plaintiff unless the terms of contract stated so which I have failed to find providing for such situation. What apparent to me from the contract between the Plaintiff and the Defendant is that that the motor vehicle was delivered to the Defendant to its premises at Kampala. Its usage and eventual movement from Kampala to Buliisa was by the directions of the Defendant. I do not accept the defence argument that since the Plaintiff hired the motor vehicle with a driver, then the plaintiff had control to be farfetched and outside the very clear evidence adduced in this respect. From the arrangements agreed between the parties, it is apparent that it was incumbent upon the Defendant to keep the motor vehicle safely as the Defendant had hired it for a particular purpose. The holding in the

case of **Vincent Mukasa versus Nile Safaris Ltd CACA No. 50 Of 1997** therefore becomes instructive in that the court held that;

“It cannot be reasonably suggested that the Applicant even imagined that the vehicle would be used by people who were not even known to the respondent as was the case here. In my judgment the hire agreement meant that the vehicle would remain under the respondent’s control; through its drivers and authorized agents...”

When this holding is applied to the instant matter, it appears to me that the moment the defendant was delivered the motor vehicle to its premises to carry out a particular function, then it had the duty to ensure that only the authorized driver had exclusive control of it. From the facts of this case, the Defendant miserably failed to do so with its trying to shift its responsibility to Equator Catering and Tullow Ltd yet none of these were party to the agreement between the Plaintiff and the Defendant.

The evidence of the police officer Sgt. Kategaya Naboth who testified as PW2 is instructive in this instance in that he stated

that he established that the person who drove the motor vehicle off the camp was one Edwin Kigula who was an employee of Equator Catering Ltd who were suppliers of food to the camp belonging Tullow Ltd and that this was the camp where Weatherford employees resided. This evidence clearly showed that the Defendant was the beneficiary of the facilities in the camp including food and transport and ought to have had in place stringent measures to avoid the scenario of abuse of the facilities as it were. In its futile attempt to run away from its responsibility, the Defendant urged this honourable court to disregard the Plaintiff's reference to the case of **Fulgence Mungereza versus Ponsiano Lwakataka** on the basis that to be in possession was to exercise control over an article and that in the instant case it did not have control over the camp. I find this a classical example of trying to run away from ones' responsibility in that the Defendant clearly hired a motor vehicle which was delivered to its premises in Kampala and so from thence on it had had the duty to ensure that it exercised sufficient control over it to the exclusion of all others. Mere denial of the person who drove the vehicle and caused the accident, in my view, is not sufficient to extinguish

such responsibility since it is clear from the contract of hire that that the Plaintiff took Moses Yiga, driver of the suit vehicle to the Defendant and handed both the driver and the vehicle to the Defendant.

I do not even find plausible the defence that the premises where the vehicle was kept belonged to Tullow Oil yet the evidence adduced before this court show that it was the Defendant's employees who were staying in the said camp. This contention is even made more irrelevant in that the discussions between the Defendant and the Plaintiff as regards the contract for hire of the motor vehicle was completed in Kampala and from then on the Defendant took over the responsibility over the vehicle as the Plaintiff delivered vehicle for use as agreed signifying from then on that it had exclusive possession and control which was even manifested when it directed the driver to go to Buliisa where it had work for the motor vehicle.

It would be fallacious to find otherwise than that as from the time the Defendant took over the vehicle, the Plaintiff would still have a say on what it was used for since no other evidence show that thereafter the Plaintiff had any control as to when or what the

motor vehicle would be used for and even where it went during the hire period.

On the other hand, I find that the uncontroverted evidence of PW1 and PW2 show that even the Defendant after the hire motor vehicle took care of its driver's welfare and emoluments thus confirming the control it had over the same.

One point of interest is the disparity of the manner in which the contract was made. While the Plaintiff contended that the contract between it and the Defendant was made orally, the Defendant through DW1 tendered a car rental contract exhibited as "D1" which PW1 had no knowledge off. But of interest is that a reading of the provisions of even this written contract appears to confirm that the Defendant had possession and was in charge for the safety of the motor vehicle during the hire period.

The truth of the matter is therefore that the Defendant failed upon contractual obligations whether verbal or written with the result that subject of the contract got wasted during its custody and therefore it has the duty to compensate the Plaintiff for the same even if a servant of a third party did cause the undesired consequence. Maybe, the Defendant would have a claim against

such Third party but cannot run away from clear contractual obligations between it and the Plaintiff.

Indeed , I found it quite irresponsible on the part of the Defendant when it failed to secure the said motor vehicle after it got involved in the accident and take it to a secure place yet at that time of the accident the Defendant was still obligated to take care of and deliver the motor vehicle to the Plaintiff in the same state as it was taken when the contract was penned.

The consequences of the breach of the contract resulted in the Plaintiff losing the suit motor vehicle whose value before the accident was estimated as **Ug. Shs 43,850,000/=** (Uganda Shillings Forty Three Million, Eight Hundred Fifty Thousand only with a further loss of income of **USD.70** (United States Dollars Seventy only) per day right from that date till otherwise decided.

The behavior of the Defendant clearly was a manifestation of the party to a contract which took lightly its obligations yet it had the audacity to request another to place in its custody goods of value.

I am convinced that find that the Defendant who had clear obligations under a contract it had with the Plaintiff breached it and must be held responsible for the consequences of the breach

as it was at all material times in possession of the said motor vehicle as a bailee.

This issue is therefore answered in the positive.

b. Was Kigula Edwin an agent of the Defendant for whom the Defendant is vicariously liable

From the testimonies of PW1, PW2, PW3, DW1 and DW2 that the suit motor vehicle was being kept/parked at Tullow's camp in Buliisa and it was Edwin Kigula, the camp manager who drove it out of the camp and crashed it. Both DW1 and DW2 testified that Tullow Oil was in charge of security at the camp where the suit motor vehicle was being kept/ parked. However, there was no evidence adduced before this Honorable Court to show that the contract between the Plaintiff and the Defendant involved Tullow Oil neither was there any clause in the said contract showing that the motor vehicle could be used by another party other than the Defendant through PW2.

The testimonies of DW1 and DW2 to the effect that the Defendant was not in charge of security of the motor vehicle at the camp is not only misleading in this respect but an attempt to run away from obligation. One cannot assume responsibility for a facility

such as the motor vehicle in this case which is for its exclusive use and then due to its failure to put in place measures which would ensure safety of such a facility then argue that it was another's fault. Shifting responsibility to a third party must be borne out of clear provisions of a contract and nothing else. In the instant case I find that Tullow Oil was completely is a stranger to the contract between the Plaintiff and the Defendant and so the Defendant cannot hide behind the fact that the motor vehicle was purportedly kept at Tullow Oil's camp and therefore it is excused from its responsibility. The fact is that it was the Defendant who had the use of the motor vehicle at Buliisa who directed the motor vehicle be taken there and not the Plaintiff. The Defendant therefore had a benefit which it wanted to put the motor vehicle's use for and not the Plaintiff.

In this instance , I find that the Defendant exhibited marked incompetence in that it allowed the motor vehicle to be taken to a camp and ceased effective control over it yet it had the contractual duty to the Plaintiff to ensure that the motor vehicle was returned to the Plaintiff in the condition it was hire, wear and tear exempted and so it has to be punished for that incompetence

as was the decision in the case of **D.S.S Motors Limited versus Afri Tours And Travels Ltd and Amin Tejani HCCS No. 12 of 2013** where court held that he who does something through another does it himself. And since the Defendant was the hirer and therefore a bailee of the suit motor vehicle, the Defendant had the duty to safeguard the motor vehicle while in its possession since it did not do so then it is liable for that lapse. The Defendant cannot by any iota of evidence even shift responsibility of safeguarding the motor vehicle to its driver since the said driver had no authority even at the said camp where the vehicle was kept. In any case, it was not the who directed the vehicle to be taken to such a camp neither was he responsible for its management. The Defendant apparently forgot that it was the one who hired the vehicle and therefore had responsibility over it. From the above, I find that the Defendant responsible for motor vehicle at all times even if a third party eventually drove it and had involved in an accident. It was vicariously liable for the act of that third party.

8. WHAT ARE THE REMEDIES?

Jason Asselstine (PW1), the Plaintiff's Managing Director (the Plaintiff) prayed for the remedies which are particularized in the plaint. These included the value of the motor vehicle. From the evidence before me, I find that the valuation of the motor vehicle was not challenged except the defence choosing to cling onto the valuer's competence. This notwithstanding, it is clear that the Plaintiff incurred a loss which was a result of the Defendant's own negligent act. I am in agreement with the Plaintiff's submission that the valuation report submitted by PW7 be taken as of a person specially skilled in valuation since the Defendant did not produce any evidence in rebuttal of the findings of PW7's report except on its dwelling on his qualification yet the case of **Uganda versus Ntura [1977] HCB 103** clearly makes it possible for an unchallenged expert evidence to be accepted by court since in that case was held that in order for an expert to be competent as a witness he need not have acquired his knowledge professionally but that his evidence is admissible as far as he has made a social study of the subject or acquired a special experience.

As regards Special Damages, **Black's Law Dictionary, Bryan A Garner, (9th Edition) at page 448** defines it as damages that are alleged to have been sustained in the circumstances of a particular wrong. To be awardable, special damages must be specifically claimed and proved. In the instant matter, the Plaintiff has proved that it was in the business of car hire and it lost out when its vehicle got involved in an accident while in the possession of the Defendant. It is just and fair that the Plaintiff be reverted to the position it was before it entered into contract with the Defendant which was violated by the Defendant. According to Dr. Ochwo Ochieng Ojomoko (PW7) he presented an Inspection, Assessment and Valuation report Exhibited P.5 which showed depreciation after the accident of the suit motor vehicle by 78% corroborating the fact that the said motor vehicle was in good mechanical condition before the accident as testified to by Orima Boniface, the Inspector of Motor Vehicles; Mid-Western Region based at Hoima Police Station (PW6) who exhibited Valuation report Exhibit P.4. All these go on to show that the Defendant had to make good the loss incurred by the Plaintiff since the motor vehicle was destroyed in its custody as was held by Oder JSC in

the case of **Foods and Beverages Ltd versus Israel Musisi Opoya, SCCA No. 32 of 1992**, that“...*the liability flowed from destruction ...that was done ... when it was in the appellant’s custody...*”

Therefore Defendant would be liable to pay the value of **Ug. Shs. 43,850,000/=** (Uganda Shillings Forty Three Million, Eight Hundred Fifty Thousand only) given as the lost incurred by the Plaintiff.

As regards lost income, according to the testimony of PW1, the Plaintiff also seeks lost income of **USD.70** (United States Dollars Seventy only) per day right from the date of the accident date. In the case of **Robert Coussens versus Attorney GENERAL, SCCA NO. 8 OF 1999**, Oder, JSC cited with approval the holding of Earl Jowett in **British Transport Commission versus Gourlev [1956] A.G. 185** where it was held that;

“The broad general principle which should govern the assessment of damages in cases such as this, is that the tribunal should award the injured party such a sum of money as will put him in the same position as he would have been if he had not sustained the injuries. See per Lord Blackburn in;

Livingstone versus Rowyards Coal (1880)5 App Cas.259” with the learned Justice further holding that “*in case of pecuniary loss, such as claimed in the present, it is easy enough to apply this rule in the case of earnings which have actually been lost, or expenses which have actually been incurred up to the date of the trial. The exact or approximate amount can be proved and if proved, will be awarded as special damages; In this category falls income or earning lost between the time of injury and the time of trial. But in the case of future financial loss whether it is future loss of earnings or expenses to be incurred in the future, assessment is not easy. This prospective loss cannot be claimed as special damages because it has not been sustained at the date of the trial. It is therefore, awarded as part of the general damages. The plaintiff no doubt would be entitled in theory to the exact amount of his prospective loss if it could be proved to its present value at the date of the trial. But in practice since future loss cannot usually be proved, the court has to make a broad estimate taking into account all the proved facts and the probabilities of the*

particular case. All this was stated very clearly by Lord Reid with reference to loss of future earnings in his speech in: British Transport Commission versus Gourley (1956)A. C.185 at p 212; (1955)3A 11 ER 796 at p.808:

From the evidence on record and authorities cited above, it is clear that the contract of agreement was that the Defendant was to pay **USD.70**(United States Dollars Seventy only) per day as consideration for the hire of motor vehicle contract. However, since the date of the accident, there is no evidence to show that Defendant continued doing so. The Plaintiff has lost income of **USD.70** (United States Dollars Seventy only) per day right from the date of the accident and ought to compensate for such loss from the 21st day of September, 2011 till the date when the Plaintiff brought this matter for adjudication.

As regards other expenses indicated that it incurred the plaintiff seeks other special damages in form of;

- Ug.Shs.430,000/= (Uganda Shillings four Hundred Thirty Thousand only) for breakdown;
- Ug. Shs.600,000/= (Uganda Shillings Six Hundred Thousand only) for car loader;

- Ug. Shs.78,000/= (Uganda Shillings Seventy Eight Thousand only)for Police Report;
- Ug. Shs.500,000/= (Uganda Shillings Five Hundred Thousand only) for Valuation report and
- Ug. Shs. 400,000/= (Uganda Shillings Four Hundred Thousand only) as car parking fees;

These are Exhibit P2 have not been discounted and have been proved as actual expenses incurred as a result of the accident and I would I find that ought to be refunded as claimed.

The Plaintiff also claims general damages for the inconvenience. General damages are defined in **Black's Law Dictionary, Bryan A Garner, (9th Edition) at page 446** as damages that the law presumes to follow from the type of wrong complained of. It is compensatory damages for harm resulting from the tort for which a party has sued that the harm is reasonably expected and need not be alleged or proved. In this regard, PW1 testified that the Plaintiff has suffered great inconvenience due to the conduct of the Defendant after the accident instead of resolving the matter amicably when brought to its attention decided to challenge the Plaintiff's claim yet there was contract between the two parties.

For the failure of the defendant to honour its part of the contract, I would award the Plaintiff General damages of Ug. Shs 15,000,000/= (Uganda Shillings Fifteen Million only).

The Plaintiff also claimed exemplary /punitive damages for the wanton conduct of the Defendant as PW1 testified that Defendant acted in a high handed manner when it failed to take care of and ensure security and safety of the Plaintiff's motor vehicle and even refused to tow it from the scene of accident to a safety treating it as none of their business and even after the Plaintiff approached the Defendant for compensation, the Plaintiff's representative (PW1) was harshly and rudely treated by even being kicked out of Defendant's offices. The Defendant's behavior in this respect is condemnable and is not businesslike and would therefore call for punitive damages as was held in the case of **Esso Standard (U) Ltd versus Semu Amanu Opio SCCA No. 3 of 1993** where PLATT J.S.C held that;

“...the difference between compensatory and punitive damages is that in assessing the former the jury or other tribunal must consider how much the defendant ought to pay. but also for any injury to his feelings and for

having had to suffer insults, indignities and the like and where the defendant has behaved outrageously ... full compensation”.

There is no doubt in my mind that due to the high handed conduct of the Defendant, the Plaintiff suffered and I would award punitive damages to the amount of Shs. 15,000,000/= for such outrageous conduct to the amount.

As regards interest, Section **26(2) of the Civil Procedure Act, Cap.71** provides that where a court orders a decree for the payment of money, the court may order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree as the court thinks fit.

I would direct the payment of interest therefore on the special damages at a rate of 24% per annum from the date of breach of contract i.e. the 21st day of September, 2011 till payment of the same in full and payments of interests on the general and punitive damages at a rate of 12% per annum from the date of judgment till payment of the same in full.

As regards the costs of the Suit, it is clear that the Plaintiff has incurred expenses in prosecuting this litigation. **Section 27(1) of the Civil procedure Act, Cap 71** provides that subject to such conditions and limitations as may prescribed and to the provisions of any law for the time being in force, the costs of shall be in the discretion of the court with full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid. In the instant matter, the wrongful behavior of the Defendant made the Plaintiff to suffer unnecessary costs and therefore I would award the costs of this suit to the Plaintiff.

10: Orders:

Judgment is entered in favor of the Plaintiff and the following remedies are granted by this Honorable Court:.

- a. The Defendant to pay the value of Ug. **Shs. 43,850,000/=** (Uganda Shillings Forty Three Million, Eight Hundred Fifty Thousand only) given as the lost incurred by the Plaintiff.
- b. The Defendant to pay to the Plaintiff for lost income of **USD.70** (United States Dollars Seventy only) per day right

from the date of the accident of 21st day of September, 2011 till the date when the Plaintiff filed this matter.

- c. The Plaintiff is awarded other special damages in form of;
 - i. Ug.Shs.430,000/= (Uganda Shillings four Hundred Thirty Thousand only) for breakdown;
 - ii. Ug. Shs.600,000/= (Uganda Shillings Six Hundred Thousand only) for car loader;
 - iii. Ug. Shs.78,000/= (Uganda Shillings Seventy Eight Thousand only)for Police Report;
 - iv. Ug. Shs.500,000/= (Uganda Shillings Five Hundred Thousand only) for Valuation report and
 - v. Ug. Shs. 400,000/= (Uganda Shillings Four Hundred Thousand only) as car parking fees;
- d. The Plaintiff is awarded general damages of Uganda Shillings Fifteen Million only (Ug. Shs 15,000,000/=).
- e. The Plaintiff is awarded punitive damages of Uganda Shillings Fifteen Million only (Shs. 15,000,000/=).
- f. I also award to the Plaintiff interest on the special damages at a rate of 24% per annum from the date of breach of contract i.e. the 21st day of September, 2011 till payment of

the same in full and interests on the general and punitive damages at a rate of 12% per annum from the date of judgment till payment of the same in full.

g. The Plaintiff is awarded the costs of this suit.

Henry Peter Adonyo

Judge

16th October, 2014