**THE REPUBLIC OF UGANDA,**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**HCCS NO 269 OF 2012**

1. **KISEMBO PETER}**
2. **KASOZI ADNAN}.......................................................................PLAINTIFFS**

**VS**

**COMMISSIONER CUSTOMS URA}..................................................DEFENDANT**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**JUDGMENT**

The Plaintiffs are British citizens of Ugandan origin and brought this action against the Commissioner of customs Uganda revenue authority under the provisions of the East African Community Customs Management Act 2009 for a declaration that the Defendant wrongfully or unlawfully seized and impounded or caused the seizure and impounding, held on a lien and sold by public auction the Plaintiffs goods namely Chrysler Jeep Cherokee chassis number IJ4G8B844 YYii1804, Toyota Rav 4 chassis number JTEhh20 v700244341, Volvo S80 Chassis Number YV1TS65 P911157446 and Toyota Rav 4 Chassis Number JT172SC 1100091101 and an order to the Defendant to pay the Plaintiffs Special Damages of Uganda shillings 159,250,000/=, general damages, punitive/aggravated/exemplary damages, interest thereon and costs of the suit.

The Defendant denied liability on the ground that one Mutesasira Ali who was consigned the goods by the second Plaintiff is the true owner of the goods and the vehicles were sold on the ground that the Commissioner had a lien on then to recover taxes owed by Mutesasira Ali on two Audi Q7 which he had earlier imported.

The Plaintiff is represented by Counsel Tusasirwe Benson while the Defendant is represented by Counsel Haruna Mbetta. The fact that the above described vehicles were exported from the United Kingdom to Uganda via Mombasa is admitted. It is admitted that this was evidenced by way of a bill of lading 862791666 dated 21st of September 2011. Secondly it is admitted that the bill of lading indicated that the consignor/shipper was one Adinan Kasozi of 20 Walker Avenue Stalybridge UK and the consignee is Mr Mutesasira Ali of P.O. Box 1087 Kampala. When the said vehicles arrived in Uganda, they were seized by the staff of the Defendant and held in lien on the ground that Mr Mutesasira Ali owed unpaid taxes in respect of two used Audi Q7 vehicles earlier imported by him. Finally the vehicles were subsequently auctioned by the Defendant to recover customs dues.

The primary question in dispute is whether the said motor vehicles Chrysler Jeep Cherokee chassis number IJ4G8B844 YYII1804, Toyota Rav 4 chassis number JTEHH20 V700244341, silver in colour belonged to the first Plaintiff while motor vehicles Volvo S80 Chassis Number YV1TS65 P911157446 and Toyota Rav 4 Chassis Number JT172SC 1100091101 belonged to the second Plaintiff and not to Mr Mutesasira Ali.

Three issues were agreed to for the trial of the action namely:

1. Whether the Plaintiffs were the owners of the suit vehicles?
2. Whether the auctioning of the suit vehicles by the Defendant was unlawful?
3. Remedies available to the parties?

The brief facts of the dispute are contained in the submissions of Counsel and will be considered together with the submissions. The parties put in written submissions.

The Plaintiff's case is that the Plaintiffs bought the agreed vehicles and agreed to ship the 4 vehicles to Uganda jointly as they would then be conveniently packed in one container. All the four vehicles were shipped in the names of the second Plaintiff. However because the Plaintiff did not have a tax registration number in Uganda and therefore did not have TIN numbers and because of the possibility that the Plaintiffs would not be in Uganda when the vehicle arrived, they were advised to consign the vehicles to a person living and having a registration number in Uganda to enable them clear the vehicles for Customs. Accordingly they contacted one Mutesasira Ali who agreed to be named in the shipping documents as the consignee of the vehicles for purposes of tax payment and clearance of the goods. The vehicles were bought by the Plaintiffs and shipped at the expense of the Plaintiff's and the consignee was only nominal. The container with the vehicles was offloaded at Mombasa and the vehicles were immediately impounded and seized by Kenya Revenue Authority upon request by the Defendant. The Plaintiffs were informed that this was because the Defendant had blacklisted Mutesasira Ali, the consignee they had used. The Plaintiffs who were temporary in Uganda travelled to Mombasa with a third person to present the identification documents of Mutesasira Ali whom the Plaintiffs had dealt with and officials of Kenya Revenue Authority that the blacklisted Mutesasira Ali was a different person altogether. The Plaintiffs were made to open and later resealed the container at their own costs for purposes of the inspection demanded by the Defendant’s officials. There were eventually permitted to bring the vehicles into Uganda after a delay of two months. Because the handlers at Mombasa failed to fit all 4 vehicles again in the container in which they had been shipped, the Jeep Cherokee had to be issued with fresh papers and brought by road at the Plaintiff’s expense.

The Jeep Cherokee was stored at Maybach bonded warehouse in Bunga, Kansanga. The rest of the vehicles in the containers were received at TIGA Investments Bonded Warehouse. The Plaintiffs caused to be processed customs documents to enable them clear taxes and related charges. After the vehicles had been in bond for about two weeks, the Plaintiffs were informed that all four vehicles had been seized/impounded and taken to the Defendant's yard at Nakawa where they were purportedly held in the lien in respect of taxes owed by one Mutesasira Ali for two Audi Q7 previously imported by him and which he denied. No says notice was given to the Plaintiffs and no formal explanation was given at the time. The Plaintiffs were requested by the Defendants officials to produce Mutesasira Ali in person which they did to the Defendant's staff of the enforcement section. The enforcement section interrogated Mutesasira Ali and thereafter released him together with his own vehicle which was a Mercedes-Benz he had just imported and which he readily admitted was his own vehicle. Furthermore the Plaintiffs furnished all necessary proves that the four vehicles were their own and did not belong to Mutesasira Ali. Mutesasira Ali himself made a statutory declaration to that effect and presented it to the Defendant but the Defendant remained adamant. At the end of May 2012, the vehicles were auctioned despite the protests of the Plaintiffs. On the other hand the Defendant agrees that the 4 vehicles were imported but by one Mutesasira Ali who testified as PW2 and who had a specified tax identification number. The Defendant also agreed that the vehicles were seized as a lien on the ground that Mutesasira Ali owed unpaid taxes in respect of two used Audi Q7 vehicles Ali imported by him in 2011. The vehicles were subsequently auctioned by the Defendant to recover taxes.

**Whether the Plaintiffs where the owners of the suit vehicle?**

The Plaintiff's Counsel submitted that PW1 Mr Kasozi Adinan testified in detail how the Plaintiffs acquired the suit vehicles. Secondly PW2 Mr Mutesasira Ali gave evidence to the same effect. He was very clear that the vehicles were not his vehicles but belonged to the Plaintiffs. Furthermore he made it is clear to the Defendants officers right from the outset and event swore a statutory declaration to that effect according to exhibit P5.

On the other hand the Defendant’s position was that so long as the bill of lading had Mutesasira Ali as the consignee, the vehicles belonged to him. In other words the bill of lading is conclusive evidence of ownership and the Defendant was not prepared to consider other evidence of alternative ownership however compelling that evidence is. The Defendant did not consider itself obliged to consider other options for recovering its taxes. The Plaintiff's Counsel submitted that the stand of the Defendant’s officials was erroneous in law and fact.

As far as a bill of lading is concerned, all authorities on international trade and carriage of goods by sea agree that a bill of lading serves three purposes. This is captured by Schmitthoff’s Export Trade at page 561. He writes that the general position of a bill of lading from the legal point of view is that it is a formal receipt by the ship owner acknowledging the goods alleged to be of the stated species, quantity and condition shipped to a stated destination in a certain ship or at least are received in the custody of the ship owner for the purpose of shipment. Secondly it is the memorandum of the contract of carriage, repeating in detail the terms of the contract which was in fact concluded prior to the signing of the bill of lading and thirdly it is a document of title to the goods, enabling the consignee to dispose of the goods by endorsement and delivery of the bill of lading.

In this particular case the Defendant operated under the erroneous belief that the bill is a document of title and the consignee in whose names it is, is the unquestionable and absolute owner of the goods. This is an erroneous position on the basis of all the authorities.

The Plaintiff's Counsel submitted that in the first place a bill of lading is not actually the contract. It merely repeats the terms of the contract already made between the carrier and the consignor. This is explained by Lord Goddard CJ in **SS Ardennes vs. SS Ardennes [1951] 1 KB 55 at page 59.** He held that a bill of lading is not itself the contract between the ship owner and the shipper of the goods though it is excellent evidence of its terms. The contract came into existence before the bill of lading is signed. They bill of lading is signed by one party only and handed by him to the shipper usually after the goods have been put on board. The shipper who will not have signed the bill is at liberty to adduce oral evidence to prove that there was an understanding that was at variance with the contents of the Bill.

The Plaintiff's Counsel submitted that by the same logic, there is nothing to stop the Plaintiffs as consumers from adducing evidence to prove that notwithstanding the contents of the Bill, the agreed position was that the person named as consignee was merely a nominal consignee and the true owner of the goods was someone else.

On the third basis of the purpose of the bill of lading, it is a document of title according to **Sealy and Hooley; Text and Materials in Commercial Law at page 444;** a bill of lading is regarded in law as evidencing the rights of possession and ownership in respect of the goods. These goods are deemed prima facie to be vested in the holder of the bill of lading, the person who is in possession thereof. Delivery of the goods is made by the carrier to the holder against the surrender of the bill of lading.

Consequently the right of ownership is only "prima facie" deemed to be in the holder of the bill of lading. It therefore means that it is permissible to prove that notwithstanding the contents of the bill and the fact of who is the holder thereof, somebody else can be proved to be the owner of the goods. Secondly the holder of the bill, even if he is the person named as the consignee, is entitled to receive the goods and therefore take ownership and possession of the goods. A bill of lading is a negotiable instrument and indeed PW1 and PW2 testified that it is the Plaintiffs who received the goods at their destination in Mombasa. It was not Mutesasira Ali received the goods.

Additionally the bill of lading ceases operation when the goods are delivered. According to Schmitthoff a bill of lading ceases to be a document of title to the goods upon the holder taking delivery of the goods at which point the bill is discharged. A bill of lading is a document of title after the contract of carriage by sea and is discharged by delivery of the goods against the Bill. In the instant case the Bill of lading clearly stipulated that it was for carriage of goods up to Mombasa. Whilst the goods were delivered at Mombasa and received, the Bill was discharged. It could therefore not the document of title to the goods in Uganda.

Whether or not a Bill of lading, first title on the consignee named therein or someone else depends on the intention of the parties. The intention of parties was to consign the vehicles in the names of Mutesasira Ali while ownership thereof remained with the Plaintiffs. In conclusion the ownership of the goods is not a creature of the Bill of lading. The Bill of lading is only prima facie evidence of ownership. The Defendant was duly bound to consider other evidence adduced which conclusively established that the goods did not belong to Mutesasira Ali. The Defendant’s only basis for insisting that the goods were that of Mutesasira Ali is the Bill of lading. This is based on the evidence of DW1 however the Plaintiffs separately proved ownership to the goods and the court ought to find that the Plaintiffs were the true owners of the suit vehicles.

In reply the Defendant’s Counsel submitted that ownership of the vehicles for purposes of the East African Community Customs Management Act 2004 was vested in Ali Mutesasira on account of being the consignee named in the bill of lading.

Section 2 (1) (b) of the EACCMA 2004 gives the definition of owner in respect of goods. The definition is inclusive and means any person holding himself or herself out to be owner, importer or consignee. Furthermore he submitted that it is trite law that a bill of lading is a document of title by endorsement.

On the holding of Kennedy LJ in **Biddell Bros versus E Clemens Horst & Co [1911] one KB 934 at pages 956 and 957**. It was held that a bill of lading in fact represents the goods and possession thereof places the goods at the disposal of the purchaser. The bill carries with it is not only full ownership of the goods but also all rights created by the contract of carriage between the shipper and the ship owner. It is intended to unlock the door of the warehouse, floating, or fixed, in which the goods may happen to be. Furthermore, P.S. Atiyah in the book "Sale of Goods 9th Edition at page 95, defines a bill of lading as a document of title. He wrote that the peculiar feature of the document of title is that mere transfer or endorsement of the document, if accompanied by the necessary intention, suffices to transfer the possession and property on the goods, even without attornment. When goods are shipped, the ship owner or his agent delivers a bill of lading and this document in law and in fact represents the goods.

The Defendants Counsel also relies on the judgment of justice Diplock in **Barclays bank Ltd versus Commissioner of Custom and Excise [1963] 1 QB 81** to the same effect.

He submitted that the suit vehicles were imported by one Mutesasira Ali of tax identification number 1000460865 according to the bill of lading exhibit P1. The facts are admitted in the plaint and in the cross-examination of PW1 and PW2 respectively.

On the other hand DW1 Mr Nicholas Kanabahita testified that the bill of lading was not subject to any legal or factual condition or interest of the Plaintiffs. For customs purposes, ownership in the goods is determined according to the particulars in the bill of lading. Furthermore he testified that the Plaintiffs if owners of the vehicles were obliged to apply to the Commissioner of customs for change of ownership which was not done in the present case. He concluded that if ownership does not change, it presupposes ownership according to the importation documents. Section 51 (1) (c) of the EACCMA 2004 gives the Commissioner Customs powers to deal with change of ownership of goods. It provides that the Commissioner may permit the name of the owner of the goods in the account taken under section 47 to be changed. He submitted that PW1 and PW2 failed to explain to court why they do not fill the necessary transfer forms to change of ownership of the suit vehicles. For the Plaintiffs to assert that they did not have tax identification numbers is a lame excuse and to hold so would create a window for smuggling contrary to customs law and destroying the value of the bill of lading as an instrument of international trade. Additionally the Plaintiff's action was an afterthought to prevent the Defendant from performing its statutory duties of levying duties on earlier importation of the two Audi Q7 motor vehicles.

The Defendant’s Counsel agrees with the authorities supplied by the Plaintiff's Counsel to the effect that a bill of lading is a document of title to the goods. He contended that the authorities support the Defendant's case that the ownership in the goods in issue was vested in Ali Mutesasira and not the Plaintiffs. In the case of **Barclays bank Ltd versus Commissioner's of Customs and Excise** (supra) Lord Diplock dismissed the interpretation of the law to the effect that a bill of lading ceases to be a document of title by delivery. He held that it is a startling proposition of law which if correct would destroy the value of a bill of lading as an instrument of overseas credit. The Defendant’s Counsel further submitted that oral evidence cannot be adduced to contradict the terms of a document reduced in writing.

The Plaintiffs relied on the logbooks of the vehicles to prove ownership. However the submission is misconceived and the court should reject it for the reason that the logbooks were certificates of registration in the United Kingdom and ceased to have effect upon de - registration and export to Uganda. The suit is not concerned with ownership in the UK but with ownership in Uganda and therefore the certificates or logbooks of the vehicle have no bearing on the case. He submitted that the ownership of the suit vehicle is vested in Ali Mutesasira, the importer thereof and not the Plaintiffs.

In rejoinder the Plaintiff's Counsel with reference to the definition of owner under section 2 of the EACCMA submitted that the provision was inclusive. It includes "any person holding himself or herself out to be the owner". In the instant case the Plaintiffs held themselves out to be the true owners. Ali Mutesasira the named consignee confirmed to the Defendant and to the court that indeed the Plaintiffs are the true owners.

Furthermore the full wording of the definition is revealing. It provides that "owner" includes even "the exporter, the consignee, agent or the person in possession of, or beneficially interested in or having control or power of disposition over the goods." Of all the variable words, it is only the word "consignee" which would fit Mutesasira. By the time the goods were seized, they were bonded and were in the constructive possession of the Plaintiffs who had gone to Mombasa to clear the confusion over the goods and transport them into the country. As soon as the goods were cleared at Mombasa, the bill of lading had served its purpose and it does not cover carriage of goods by road. The Bill of lading linkage of the goods would Ali Mutesasira ended. There was need to look at the other aspects of ownership as understood under the Act. The Plaintiffs were either in possession or beneficiaries interested in the goods. They were the ones having control of the goods. The Plaintiffs transported the goods all the way from Mombasa and arranged for their clearance. Mutesasira Ali was only a nominal consignee and indeed they testified about his status.

Furthermore the Defendant’s Counsel made the Plaintiffs case by submitting that mere transfer or endorsement of the document if accompanied by the necessary intention suffices to transfer the possession and property in the goods even without attornment. Mutesasira Ali passed the bill of lading to the true owners of the goods and had nothing more to do with them. To insist that Mutesasira Ali is to the owner of the goods some months after he transferred the bill of lading to the true owners robs the nature of a bill of lading as a negotiable instrument and as a document of title.

Issue number two:

**Whether the doctrine of the suit vehicle by the Defendant was lawful?**

On this issue the Plaintiff's Counsel submitted that under section 130 of the East African Community Customs Management Act, 2004 the Defendant only had a lien on goods on which the defaulter was the owner. The suit goods were not owned by the purported defaulter.

Secondly Mutesasira Ali had earlier imported two Audi vehicles and somehow they were released or they disappeared without the taxes being paid. No explanation was given as to how this happened. Evidence of DW1 on this aspect left a lot to be desired. He had no knowledge of the facts in issue. He admitted that he had never had much to do with the matter and the investigation thereof. He could not explain even when Mutesasira was produced before the Defendant's officers, why he was released. He further admitted that the matter of clearing out the vehicles was the responsibility of a duly licensed clearing agent but did not explain why neither the agent nor Mutesasira were put to task over the missing vehicles and the unpaid taxes. He could not explain why Mutesasira was allowed to take away his Mercedes-Benz that was admittedly his yet under section 130 (1) of the East African Community Customs Management Act 2004, the Defendant was empowered to summarily recover the taxes. On the other hand section 139 (2) allows the Defendant to exercise a lien on goods subsequently owned by the defaulter. Under section 130 (3), the Defendant would levy distress on the property of the Defendant. Under section 130 (4) the customs agent could be held personally liable for the taxes.

All the above powers where available but not invoked against the supposed defaulter. Instead the Defendant chose to go for goods it already knew belonged to innocent parties. Consequently the seizure, continued detention and subsequent auction of the Plaintiff’s vehicles were done in bad faith. The Plaintiffs had not defaulted in payment of duty and the sale of their vehicles was manifestly wrongful.

In a reply the Defendants Counsel submitted that the ownership of the vehicle vested in Mutesasira Ali and the suit vehicle were lawfully auctioned by the Defendant. He submitted that the evidence of DW 1 was that on 26 February 2011 one Ali Mutesasira of tax identification number 1000460865 imported into Uganda two Audi 27 motor vehicles according to exhibit D1 and D2. Import duties totalling to Uganda shillings 160,251,556.35/= were due. The vehicles ought to have reached Kampala within two days from Malaba customs by 28 February 2011. However they did not breach the bonded warehouses and taxes thereof remain outstanding.

The vehicles in dispute in the suit were imported in the names of Ali Mutesasira with the same identification number in 2012. The Defendant held that the vehicles in lien on account of outstanding taxes for the two used Audi 27. After failure to clear the taxes, the suit vehicles were auctioned off after issuing a public notice exhibit D9 and a total of Uganda shillings 47,100,000/= which was part of the taxes was realised. The balance of Uganda shillings 69,151,546.35/= remained outstanding from Mutesasira Ali. Furthermore tax identification numbers are specific to each particular taxpayer and was registered cannot be owned the other taxpayers.

Section 130 of the EACCMA 2004 empowers the Defendant to recover duty by distress. Counsel further relied on section 130 (2), 130 (3) and 130 (4) of the EACCMA 2004 for the powers of the Defendant.

Furthermore whereas section 147 of the EACCMA 2004 imposes liability on a duly authorised agent, the proviso to this section is to the effect that nothing therein contained shall relieve the owner of the goods from such liability. Furthermore section 48 it is to effect that the owner shall be liable for the acts and declarations of such a duly authorised agent.

The law imposes the primary duty to pay for the goods on the owner in mandatory terms and the claims of the relevant Partner State has priority over the claims of whatever nature of other persons upon the goods. The goods may be sold to meet the duty due if the duty is not paid. Reference to the agent in section 130 (3) (d) (ii) of the EACCMA is only directory and does not take away the duty to pay taxes by the owner of the goods.

The Defendants Counsel further submitted that it is not in dispute that the two Audi Q7 were imported by Ali Mutesasira. The Defendant was lawfully justified to sell the suit vehicles to recover taxes due. The particulars of Mutesasira were the same. He failed to prove that he was not that the importer of the Audi Q7. Lastly the Defendant’s Counsel submitted that it would be unreasonable for the Defendant to look for the clearing agent when there were other goods under customs control.

In rejoinder the Plaintiff's Counsel reiterated earlier submissions and repeated that the auctioning of the goods was unlawful as the Plaintiffs had no pending tax liabilities. Mutesasira Ali denied importing the two Audi vehicles the subject matter of the earlier tax claims. The Defendant must be aware of this and that beyond its staff helping themselves to the Plaintiffs vehicles, nothing has ever been done to recover the taxes from Mutesasira who even handed himself over to the Defendant but was released along with a vehicle that was unquestionably his. The Plaintiff's Counsel emphasised that no step was ever taken against Mutesasira Ali or the clearing agent who supposedly handled the Audi vehicles.

Section 130 of the EACCMA 2004 provides that the civil debt constituted in the duty is charged on the goods in respect of which the duty is payable. In other words it is charged on the Audi Q7.

Such duty shall be payable by the owner of the goods. The duty is primarily recovered by way of summary proceedings and no summary proceedings were ever filed. Fourthly this was without prejudice to other forms of recovery. Subsection 2 further is a subsequent section to be used only if the previous section action did not yield any tax dividends. It allows the recovery through a lien on the goods belonging to the person from whom duty is due. The Plaintiff's case is that the goods were not such goods as belong to the tax defaulter but the goods belonged to somebody else. It has never been proved that the named consignee Mr Mutesasira Ali owed such a duty. The remedy of self-help by seizure of the goods and lien should only be applied in straightforward cases where both the tax liability and ownership of the goods is obvious. In the instant case neither the tax liability nor ownership was obvious.

**Judgment**

I have carefully considered the Plaintiff’s suit and the defence of the Defendant. I have also considered the evidence adduced as well as the arguments of Counsel. The Plaintiff’s case as submitted by the Plaintiff's Counsel is simple and straightforward in that they assert that they are the owners of the suit motor vehicles which had been auctioned by the Defendant’s servants to recover taxes which are claimed to be owed by one Mutesasira Ali. The taxes are in respect of two Audi Q7 imported into Uganda by Mutesasira Ali. Customs duties were not paid for the said vehicles and when goods were consigned to Mutesasira Ali, the vehicles in question were impounded and sold by the Defendant’s officials to recover customs duties owed on two Audi Q7.

I agree with the Plaintiff's Counsel that the primary question in this dispute is whether the said motor vehicles Chrysler Jeep Cherokee Chassis Number IJ4G8B844 YYII1804, Toyota Rav 4 Chassis Number JTEHH20 V700244341, silver in colour belonged to the first Plaintiff while motor vehicles Volvo S80 Chassis Number YV1TS65 P911157446 and Toyota Rav 4 Chassis Number JT172SC 1100091101 belonged to the second Plaintiff and not to Mr Mutesasira Ali.

The Plaintiffs rely on documents of title to the vehicle namely their logbooks. While the Defendant relies on the bill of lading by which the four vehicles where imported. The bill of lading is exhibit P1. In exhibit P1 the consignor is Adinan Kasozi of 20 Walker Avenue Stalybridge SKF 15 2PE of the United Kingdom and the consignee is Mutesasira Ali of P.O. Box 1087, Kampala, Uganda. The four vehicles were imported in one container. The goods were shipped from Liverpool in the UK and were destined for Mombasa. It was for transit to Kampala from Mombasa. What transpired in Mombasa when the goods were initially seized is of material importance in resolving the issue of ownership to the goods.

Three issues were agreed for resolution of the dispute and the first is whether the Plaintiffs are the owners of the suit vehicles. The second is whether the auctioning of the suit vehicles by the Defendant was unlawful? Thirdly the issue is the remedies available to the parties. Issues number one and two will be considered together.

**Whether the Plaintiffs were the owners of the suit vehicles? Secondly whether the auctioning of the suit vehicles by the Defendant was unlawful?**

The Plaintiffs produced documents of title to the suit property which they variously bought from the United Kingdom. They conclusively proved ownership to the vehicles. The ownership to the vehicle is confirmed by several exhibits. Most importantly the Plaintiffs also produced the logbooks and gave evidence of how they acquired the motor vehicles. On the other hand the Defendant’s officials only relied on the bill of lading and the fact that one Mutesasira Ali was the consignee named in the bill of lading in respect of the four vehicles. The question is whether the fact that a consignee is named in a bill of lading necessarily means that the consignee is the owner of the goods? Strangely the Defendant’s Counsel submitted that when the goods were consigned, the ownership of the goods in the United Kingdom became irrelevant. The vehicles were for re-registration in Uganda.

The question of whether somebody is the owner of goods has to be considered objectively as to the matter of fact whether he or she owns the goods by virtue of having acquired legal title to it i.e. through purchase. The question of legal title can be problematic. Whereas the legal title can vest in one person, the beneficial title or ownership may be in someone else. The fact of the right to deal in the goods and to transfer it by virtue of that right is only a consideration of the legal title and right of possession to the goods. It is important in international business that the person holding the bill of lading holds a document of title conferring upon that person certain rights by virtue of being the holder of the bill of lading.

From the evidence adduced, the Plaintiffs claimed to be the owners of the vehicle when it arrived at Mombasa. PW1 Mr Kasozi testified orally. he is the owner of the container in which the vehicles were imported. Two of the cars belong to him and the other 2 to Mr Peter Kisembo. His testimony is that he did not have a tax identification number and used one Mutesasira Ali for the importation of the vehicles into Uganda. When the goods arrived in Mombasa it was given to SPEEDAG Interfreight to convey them to Kampala. It transpired that the consignee was a blacklisted person by Uganda Revenue Authority. They went to Mombasa to assess what was going on. The containers were opened. Thereafter the vehicles were brought to Kampala and while they were trying to pay taxes they were informed that the vehicles had been impounded by URA. In Nakawa and at the offices of the Defendant, one Mutesasira Ali was summoned and turned up. He had a Mercedes-Benz which PW1 had sold to him. His Mercedes-Benz was confiscated and later released. However the vehicles of the Plaintiffs were detained. It is apparent from the testimony and cross examination that the Plaintiffs informed of the Defendants officials that they were the owners of the vehicle. Mr Mutesasira Ali was also produced. In addition Mutesasira Ali in exhibit P5 signed a statutory declaration confirming that the vehicles belonged to the Plaintiffs. The statutory declaration is dated 31st of January 2012. It is an agreed fact that the vehicles of the Plaintiffs were subsequently sold by the Defendants officials on the footing that they belonged to one Mutesasira Ali. The obvious question is why the vehicle of Mutesasira Ali namely a Mercedes-Benz was released? According to PW2 Mr Mutesasira Ali, the vehicles were attributed to him as the owner thereof under a mistaken belief by the Defendant’s officials. The vehicles were advertised and the sale date according to the advertisement was 30th of May 2012. The Defendant insisted that Mutesasira Ali was the owner of the goods.

There is overwhelming evidence that the Plaintiffs are the owners of the vehicles. Furthermore they notified the Defendant that they were the owners of the vehicle. It was not necessary for them to have the vehicle transferred into their names. The only liability they had was to pay duty for the vehicles. Unfortunately the vehicles were not assessed for payment of duty but used to settle the liability of a tax defaulter whose names are Mutesasira Ali. In the circumstances it is a question of fact established by evidence that the Plaintiffs are the owners of the vehicle and issue number one on a matter of fact is answered in the affirmative.

Both Counsel submitted at length on the issue of whether a bill of lading is a document giving evidence of ownership of the vehicle. The right to deal with the goods should be distinguished from the right to beneficial ownership in some cases. I will start with some definitions of terms. A bill of lading is a document of title. Section 1 (e) of the Sale of Goods Act Cap 82 defines documents of title to include bills of lading and provides that:

“document of title to goods” includes any bill of lading, dock warrant, warehouse-keeper’s certificate, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods represented by it;”

The key words in the definition are that they are documents used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods presented by it. The statutory definition makes it clear that bills of lading among other documents of title are used as proof of possession or control or authority or purported authority either by endorsement or by delivery by presentation as proof of authority to receive goods or to deal in the same. The statutory definition is a working definition meant to facilitate commerce. The question remains whether the same working definition ought to be insisted upon for tax purposes. Additionally if it is insisted upon for tax purposes, the taxes to be paid on the goods are taxes imposed on the goods themselves and in that regard it would be immaterial whether the taxes are paid by the consignee or the actual owner in case the consignee and the beneficial owner are different persons. In other words customs duties assessed for the goods can be paid by the person holding the bills of lading for the goods. The bills of lading confer on that person the right of disposal of the goods, the right of transfer or the right of control over the goods. However the Plaintiffs case does not involve assessment of customs duty for the vehicles imported and consigned to one Mutesasira Ali. The issue of whether the goods were assessed for customs duty is not in contention. What is in contention is whether the goods could be taken to be owned by the consignee and therefore used to settle the consignee’s tax liability.

In this case the goods were impounded and sold to settle liability of a specific person not being the Plaintiffs who claim to be the owners of the goods. It is the act of impounding the Plaintiffs goods and having them auctioned to settle an outstanding tax liability of the person claiming to be Ali Mutesasira which is the bone of contention in this suit. According to PS Atiyah in the Sale of Goods Ninth Edition at page 95:

"When goods are shipped, the ship owner or his agent delivers to the shipper a bill of lading, and this document in law and in fact represents the goods. Possession of the bill of lading places the goods at the disposal of the purchaser.

In this case the Plaintiffs were in possession of the original bill of lading and had a right to the goods. According to **Halsbury’s Laws of England 4th edition reissue, vol. 43(2) paragraph 1532,** a bill of lading is a document signed by the ship owner, or by the master or other agent of the ship owner, which states that certain specified goods have been shipped in a particular ship and which purports to set out the terms on which the goods have been delivered to and received by the ship. The general rule is that the owner of the goods is the person named in the bill of lading as consignee and the one who holds the original bill of lading.

The definition gives the general rule that the person named as the consignee is the one who holds the original bill of lading. However bills of lading can be transferred and therefore the general rule does not apply in all situations. What is material in all cases is the intention of the parties. According to Atiyah (supra) at page 372 where payment is only to be made against documents, the seller will normally have himself named as the consignee in the bill of lading. That means that the goods would be deliverable under the bill of lading to or to the order of the seller. Consequently according to Atiyah (supra) there are situations where the seller of goods or the consignor of the goods reserves the right of disposal to the goods. It follows that in certain situations, property or title in the goods does not pass until further instructions from the consignor. The reservations which can be made by a seller of the goods are recognised under section 20 of the Sale of Goods Act Cap 82 laws of Uganda which provides as follows:

“20. Reservation of right of disposal.

(1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled.

(2) In the case referred to in subsection (1), notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purposes of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(3) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his or her agent, the seller is prima facie deemed to reserve the right of disposal.”

The material provision is section 20 (2) of the Sale of Goods Act which specifically provides that delivery of goods to the buyer or to the carrier or other bailee for transmission to the buyer does not imply transfer of property in the goods until conditions imposed by the seller are fulfilled. Secondly under section 20 (2) goods may be made deliverable to the order of the seller or his or her agent and the seller reserves the right of disposal. According to Atiyah (supra) at page 372 Reservation of the right of disposal makes the appropriation conditional so that the property does not pass until the condition is satisfied. He further notes as follows:

"But the terms of the bill of lading are only evidence of the intention of the parties. The fact that the bill of lading is taken in the seller's name is not conclusive proof that the seller is shipping the goods as principal, or is reserving the right of disposal. There are cases where the seller does not want or need to keep the documents as security for the price, as for instance where the seller and buyer are associated companies or where the seller agreed to grant the buyer credit. In such a case the seller may in fact transfer the bill of lading to the buyer as soon as he receives it, which would probably indicate that he was acting as agent all along."

Finally Atiyah (supra) discusses at page 379 that a bill of lading can be transferred and thereby the property and possession of the goods.

"Not only does the transfer of a bill of lading transfer the property and the possession in the goods, but a pledge of the documents also operates as the pledge of the goods although this is not generally true of documents of title. This transferability is of crucial importance both in law and in practice. Indeed negotiability (in this sense) is of the very essence of a bill of lading. A nonnegotiable document is not strictly speaking a bill of lading at all. But a bill of lading is not a negotiable instrument in the sense that a bill of exchange is, so a transferee of a bill of lading does not get a better title than the transferor."

A bill of lading is prima facie evidence of title to the goods. In the case of **Heskell v. Continental Express [1950] 1 All E.R. 1033 Devlin J** held that the reason why a bill of lading is a document of title is because it contains a statement by the master of a ship that he is in possession of cargo, and an undertaking to deliver it. The purpose of the bill of lading is therefore among other things to assure the holder that he would be able to receive the goods and to be able to claim on the basis of the documents of title. According to Osborn's Concise Law Dictionary 11th edition it is a document of title transferable by indorsement and delivery, giving the holder the right to sue thereon but it is not a negotiable instrument so that a transferee obtained no better title than the transferor has. Transactions can be based on the face of the document.

According to P.S. Atiyah Sale of Goods 9th Edition at page 186 an agreement for the carriage of goods by sea is almost invariably recorded in a bill of lading and a bill of lading is not usually issued until after the goods have been loaded.

The conclusion is that the question of whether a consignee is the owner of the goods consigned as submitted by the Plaintiff’s Counsel is merely prima facie evidence of his ownership but further investigation can reveal the true owner. The presumption of ownership is for purposes of conferring a right to deal in the goods. It confers upon the holder of the bill of lading right to possession and the right to transfer the goods. Ownership on the other hand may include the right of title conferred by bill of lading but that in itself is not conclusive. Goods can be consigned to a clearing agent who is obliged to disclose the principal or beneficial owner of the goods.

Goods can be consigned to an agent. For customs duty purposes, both Counsels addressed the court on the provisions of the East African Community Customs Management Act 2004 (EACCMA 2004). The Defendants Counsel relied inter alia on the provisions of section 47 of the EACCMA 2004. This provision is a general provision that provides that goods which are liable to import duty may on first importation be warehoused without payment of duty in a government or bonded warehouse. Secondly as soon as practicable the proper officer shall take a particular account of such goods and shall enter such account in the book and it is on the basis of that account that duties in respect of such goods may be ascertained and paid.

The provision deals with ascertainment of the duties in respect of the goods and the payment of such duties but not with the question of ownership of the goods. Goods which are warehoused may be re-valued for customs purposes under section 52 of the EACCMA 2004 as well as section 58 which permits where the goods are to be exported stocktaking and revaluation of the goods for purposes of duty.

Furthermore the Defendant’s Counsel submitted at length on the provisions of section 130 of the EACCMA 2004 found under Part X of the Act. This part deals with liability to duty. The provisions of section 110 (1) of the EACCMA 2004 is material. It provides that duty shall be paid on goods at the rate and in the circumstances specified in the Protocol. The rest of the provisions deal with the payment of duty and enforcement of duty payment for the goods. It is in that context that section 130 of the EACCMA 2004 should be considered. This is the provision under which the Defendants officials moved to enforce the payment of duty owed on two Audi Q7 vehicles allegedly imported by one Mutesasira Ali.

Section 130 of the EACCMA 2004 provides as follows:

"**130.**- (1) Where any goods are liable to duty, then such duty shall constitute a civil debt due to a Partner State and be charged on the goods in respect of which the duty is payable; and such duty shall be payable by the owner of the goods and may, without prejudice to any other means of recovery, be recovered summarily by legal proceedings brought by the Partner State.

(2) Goods under Customs control which belong to any person from whom duty is due, and any goods afterwards imported or entered for export by that person, shall be subject to a lien for such debt and may be detained by the Partner State until such duty is paid and the claim of the relevant Partner State shall have priority over the claims of whatever nature of any other person upon the goods and the goods may be sold to meet the duty due if the duty is not paid within two months after the goods are detained.

(3) Where any duty payable to a Partner State under subsection (1) or as penalty under this Act by a person is not paid one month after the due date of payment, the Commissioner may authorise distress to be levied upon the following items- (a) goods, chattels and effects; (b) material for manufacturing or plant of a factory; (c) premises, vehicles or other property; (d) animals, which are in the possession or custody of- (i) that person; (ii) his or her agent; or (iii) any other person on his or her behalf.

(4) The warrant of distress to be issued by the Commissioner shall be as set out in the Sixth Schedule to this Act.”

There are three elements that may be deduced from section 130 of the EACCMA 2004. The first one is found under section 130 (1) of the EACCMA 2004. This is to the effect that the goods which are liable to duty, translate that duty into a civil debt payable by the owner of the goods.

Secondly where there are goods under customs control where duty is due, as provided for above the translate into a civil debt payable by the owner of the goods and any other goods which are afterwards imported and which belong to the person liable to the civil debt, are subject to a lien. The lien is imposed both on the goods liable to duty as well as any other goods afterwards imported for the purposes of payment of the civil debt.

Thirdly the Commissioner may authorise distress to be levied on the goods which are subject to the lien under customs control and which goods belong to the person liable to pay the duty.

As a matter of fact, the Commissioner purported to authorise distress on the Plaintiffs vehicles on the sole basis that the goods were consigned to Mutesasira Ali who is alleged to be liable to the civil debt on the basis of two Audi Q7 earlier on imported.

Whereas the Commissioner has powers to distress for payment of duties by seizing the goods of the owner or the defaulter in the payment of assessed duties, the right of the Commissioner extends only to recover initially from the goods which are the subject matter of the duty. In this case the goods never even reached customs. There is no evidence that attempts had been made to seize the very goods namely the Audi Q7. Where are the said vehicles? Were they not sufficient to recover the duty thereon? Secondly the Commissioner could proceed against the goods of Mutesasira Ali in case the first option of recovering from the very vehicles is unavailable. I.e. where the vehicles have been smuggled out of the country. The duty owing on the vehicles is Uganda shillings 116,251,546.35/=.

The Defendant has no right to insist that Mutesasira Ali who has in any event disowned ownership of the vehicles, is the owner of the vehicles. Whereas it cannot be said that the Commissioner acted unlawfully, the Commissioner acted without regard to the right of the Plaintiffs and therefore acted wrongfully. In the premises the distress on the goods of the Plaintiff's was wrongful and the Commissioner is liable to make good the losses suffered by the Plaintiffs.

Remedies

The Defendant did not challenge the evidence of the Plaintiffs about the costs that they had incurred as well as the damages suffered. The defence of the Defendant only went as far as the question of liability is concerned. That being the case, the Plaintiff has proved the damages claimed in the suit.

The Plaintiff is awarded special damages incurred following up the matter as well as the value of the vehicles .The breakdown is as follows:

* Uganda shillings 46,000,000/= for the Jeep Cherokee.
* Uganda shillings 33,000,000/= for the silver Toyota Rav 4.
* Uganda shillings 20,000,000/= for the green Toyota Rav 4.
* Uganda shillings 20,000,000/= for the Volvo.

The total amount claimed for the vehicles is Uganda shillings 119,000,000/= which is hereby awarded to the Plaintiffs according to the breakdown above.

Secondly the Plaintiff's incurred costs of Uganda shillings 19,320,000/= being payment for container detention due to delay in Mombasa. This amount of money occurred due to an effort investigate the title of the Plaintiffs by the Defendant and to deal with the problem of tax default of one Mutesasira Ali and the claim is hereby disallowed.

However the Plaintiff is awarded hotel accommodation and transport to Mombasa and back as follows:

* Hotel accommodation of Uganda shillings 345,600/= at Mombasa.
* Uganda shillings 1,568,000/= for two weeks at Mombasa.
* Uganda shillings 40,000/= bus fare to Kenya.
* Uganda shillings 420,000/= ticket change for the second Plaintiff cancellation of travel back to UK in pursuit of an attempt to recover the vehicles from the Defendant.
* Uganda shillings 24,400,000/= expenses while in Kenya.
* For the first Plaintiff Uganda shillings 28,000,000/= air travel to Mombasa, local travel within the Kenya and daily maintenance.
* Change of ticket for the first Plaintiff on three occasions amounting to Uganda shillings 546,220/=.

The Plaintiff having recovered special damages, would be awarded interest in lieu of general damages and the claim separately for general damages is disallowed.

The Plaintiff further claimed exemplary and punitive damages. I have considered the actions taken by the Defendant's official on the basis of Mutesasira Ali being the owner of the goods. Whereas the behaviour of the officials of the Defendants are culpable by not giving heed to the ownership of the Plaintiffs and not following up Mutesasira Ali to recover from his other property, the degree of culpability is not as high as to attract exemplary damages. However the Plaintiffs suffered at the hands of the Defendants officials and will be awarded aggravated damages.

According to Halsbury’s Laws of England, 4th Edition Vol. 12(1) at par 811, aggravated damages are awarded over and above the normal damages, by taking into account the Defendant’s motives and conduct. Such damages may be (1) ‘aggravated damages’ which are compensatory in that they compensate the victim of a wrong for mental distress, or injury to feelings in circumstances in which that injury has been caused or increased by the manner in which the Defendant committed the wrong, or the Defendant’s conduct subsequent to the wrong.

In this case the Defendant manner of commission of the wrong increased the mental distress of the Plaintiffs. The Plaintiffs had proof of ownership of the goods which they asserted at Mombasa. The vehicle was released to them and then again impounded for the taxes of a person who confirmed that they were not his goods. The vehicle of Mutesasira Ali was released but that of the Plaintiffs were kept in custody and sold. The Plaintiffs had to travel from the UK and suffered inconvenience and mental distress.

In the premises each of the Plaintiffs is awarded Uganda shillings 25,000,000/=. Giving a total of Uganda shillings 50,000,000/= as aggravated damages for both Plaintiffs.

Last but not least the Plaintiffs are awarded interest on the special damages from the date of filing the suit till date of judgment at 17% per annum.

Secondly further interest is awarded on the aggregate sum at the rate of 14% per annum from the date of judgment till payment in full.

The Plaintiffs suit succeeds with costs.

Judgment delivered in open Court the 2nd of October 2015

**Christopher Madrama Izama**

**Judge**

**Judgment** delivered in the presence of:

Benson Tusasirwe Counsel for the Plaintiff

Counsel Haruna Mbetta appears for the Defendant

Lee Taylor Attorney of the First Plaintiff is in court

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**2nd October 2015**