

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
CIVIL SUIT No. 379 OF 2014

5 **JOAN KYOMUHENDO ::::::::::::::::::::::::::::::::::::::::::::::::::::::: PLAINTIFF**

VERSUS

THE COMMISSIONER CUSTOMS

UGANDA REVENUE AUTHORITY ::::::::::::::::::::::::::::::::::::::::::::::::::::::: DEFENDANT

10 **BEFORE: HON. MR. JUSTICE B. KAINAMURA**

JUDGEMENT

15 The plaintiff instituted a suit against the defendant seeking for recovery of two hundred and seventy three cartoons of Tiger Head batteries impounded by the defendant, general damages, interest and cost of the suit.

20 The brief facts of the suit are that on 24th March 2014, the defendant entered the plaintiff's premises and found over 273 Tiger Head batteries, they asked the plaintiff for the documentation proving the origin of the goods and the plaintiff failed to produce any. The defendant then seized the goods suspecting them to be unaccustomed goods. The plaintiff wrote to the defendant claiming the goods and defendant replied stating the batteries were seized and impounded for being uncustomed.

25 The case for the plaintiff is that the seizure and subsequent handling of the goods did not follow the law as provided for under The East African Community Customs and Management Act 2004 (hereinafter referred to as EACCMA). In particular the plaintiff contends that the basis and action of seizure of her goods was not premised on any legal authority and as such, she suffered damages.

is required to keep under the provisions of the Customs Laws or which relates to any imported, exported or transferred goods, or to any goods to be imported, exported or transferred by the owner or occupier;

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- (b) examine and take copies of any such book or document;*
- (c) seize and detain any such book, document, or thing, if, in his or her opinion, it may afford evidence of the commission of any offence under this Act;*

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- (d) require the owner or occupier to answer the questions relating to any book, document, or thing, or to any declaration in any such book or document;*

- (e) require any container, envelope or other receptacle in the premises to be opened;*

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- (f) at the risk and expense of the licensee, owner or occupier, open and examine any package or any goods or materials in the premises;*

- (g) take and retain without payment such reasonable samples of any goods or materials as he or she may think necessary for the performance of his or her duties;*

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- (h) lock up, seal, mark, or otherwise secure any such premises, room, place, equipment, tank or container.*

(3) Where, on the search of any premises under this section, any uncustomed goods, or any documents relating to any uncustomed goods, are found, the proper officer may seize and carry away any such goods or documents.

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The above means therefore that the officer has powers to enter any place and seize goods that are suspected of being uncustomed.

While the provision is giving the officer powers to seize goods, the section provides that once he enters, he is supposed to first require the owner or occupier of the premises to produce, either immediately or at a time and place to be fixed by the proper officer, any book, document, or

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thing, which the owner or occupier is required to keep under the provisions of the Customs laws or which relates to any imported, exported or transferred goods, or to any goods to be imported, exported or transferred by the owner or occupier;

DW1 testified that when he asked the plaintiff about the entry documents, she first said the entry documents were with her agent and later said she had bought the goods from a trader in Kikuubo. If she had indeed bought the goods from Kikuubo, then she would have stated so at first not as an afterthought. However she first stated that her agent had the entry documents. The officer as provided by law, was willing to wait for the entry documents from her agent but she later changed her mind that she had bought the goods from a trader. He asked her to produce the receipt and she said she did not have it there with her. He further testified that since he did not get the necessary documents, he had to go with the batteries.

The law provides that;

Where, on the search of any premises under this section, any uncustomed goods, or any documents relating to any uncustomed goods, are found, the proper officer may seize and carry away any such goods or documents.

There was no proper documentation to prove the source of the goods and the plaintiff failed to give any satisfactory answers. To make matters worse, the goods were in plain boxes with no details of the manufacturer or labels of the authorized dealers/ importers of the Tiger Head batteries. This in my view justifies the actions taken by the officer.

The plaintiff further argued that the defendant unlawfully seized the goods because the defendants did not prove that the goods were indeed uncustomed. The defendants in reply contended that they lawfully seized the 273 cartons of Tiger Head batteries for being unaccustomed because no iota of evidence was provided to show that the goods were lawfully obtained and imported by the plaintiff.

The plaintiff (PW1) showed a receipt dated 6th March 2017 from an unknown trader.

PW1 stated that she first paid the alleged trader UGX 30,000,000/= and paid the balance later and that's when he issued an invoice. She did not say when exactly she paid the second installment and when the receipt was issued. Was it that same day?

This is not reflected anywhere on the invoice and neither does the invoice reflect who the issuer was. These questions remain but unanswered.

In cross examination, when asked who the issuer of the invoice was, PW1 did not have any answers. In my view the invoice looks so generic, it does not have an address, neither does it even bear any business name. In short, court cannot tell who issued it.

In my view, the plaintiff should in the very least have brought the person who sold her the goods as a witness. She did not attempt to do it and thus did not discharge the onus placed on her by law to prove the source of goods.

The plaintiff further contended that the defendant failed to prosecute her and this shows that the defendant did not have enough evidence that the goods were uncustomed. The defendants in answer stated that their failure to prosecute was because the law availed them with a wide range of options to choose from which action to take.

Again in my view whether the defendant chooses to prosecute the plaintiff or not does not in any way prove that the goods were not uncustomed.

The plaintiff further contended that the defendants entered her premises without a search warrant. The Act (as revised) vested powers of a police officer in the Investigating Officer.

Section 7 of the Act states;-

For the purpose of carrying out the provisions of this Act, every officer shall, in the performance of his or her duty, have all the powers, rights, privileges, and protection, of a police officer of a partner State in which such officer performs his or her duty.

Section 20 of the Police Act provides that;-

“a police officer in the performance of his or her functions under subsection (1) may, without warrant, and at any hour of the day or night, enter into;-

(a) any premises where he or she reasonably suspects that an unlawful activity is taking place or is about to take place; or

(b) any premises to which dissolute or disorderly characters are resorting”.

Further, Section 157 (1) EACCMA provides that;-

A proper officer may, if he or she has reasonable grounds to believe that there are on any premises any uncustomed goods or documents relating to any uncustomed goods, enter upon and search such premises by day or by night; and for such purpose the proper officer may use all reasonable force and may require the assistance of, and take with him or her, another officer or a police officer.

Accordingly under the EACCMA, the officer needs not have a search warrant to enter the premises, as long as he suspects that the premises might be having uncustomed goods. He needs not have a search warrant to enter any suspected premises

For the above reasons, I find that the defendant lawfully seized the goods.

5 ***Issue two: What remedies are available to the parties?***

The plaintiff sought the following remedies.

1. Declaration that the goods where unlawfully expounded.
2. Immediate release of goods.
3. General damages
- 10 4. Costs.

Based on my findings in issue one, the plaintiff has no remedies available to her.

In the results this suit is dismissed with costs.

I so order.

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B. Kainamura
Judge
24.07.2017

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