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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
[COMMERCIAL COURT]

H.C.C.S No. 469 of 2014

BENSON OMONDING ::::::::::::::::::::::::::::::::::: PLAINTIFF

10

VERSUS

UGANDA REVENUE AUTHORITY ::::::::::::::::::::::::::::::::::: DEFEDANT

BEFORE: HON. MR. JUSTICE. B. KAINAMURA

JUDGEMENT

The plaintiff brought this suit against the defendant seeking a declaration that the defendant is
15 liable for loss of parts from the Toyota Land Cruiser station wagon vehicle Chasis No. JTEBZZ29J-00016932, liable for any damage occasioned to the vehicle; necessary repairs to the suit vehicle assessed by Toyota Uganda Ltd and lost income arising from loss of business; general damages; exemplary damages; interest on the decretal sum at court rate from the date of judgment until payment in full and costs of the suit.

20 The facts disclosed by the plaint are that the plaintiff imported from the United Kingdom, Toyota Land Cruiser station wagon Vehicle No. JTEBZZ29J-00016932 to Uganda. The motor vehicle was received and warehoused by Coin Limited on 22nd November 2012 because the plaintiff had not paid the tax levied by the defendant.

On 22nd November 2012, the motor vehicle was inspected by the bonded warehouse coin Ltd
25 (Bond W0011) and the only fault noted was the main door switch that was missing. The plaintiff failed to clear the taxes in time and the motor vehicle was put on a want of entry list for auction.

The outstanding tax levies dictated that the suit vehicle was moved into the defendant's URA possession, custody and charge on 16th September 2013

The defendant's officers upon receiving the suit vehicle noted that it was received without a key
30 and switches.

On 6th January 2014, the plaintiff paid the taxes levied on the suit vehicle for which reason the defendant directed that it should be released to the plaintiff. The plaintiff received a copy of the Coin Limited communication, dated 6th January 2014 to the defendant which indicated that the former had waived outstanding demurrage fees on the vehicle.

- 5 The plaintiff secured permission from Uganda Revenue Authority to take the vehicle on 6th January 2014.

The plaintiff inspected the suit vehicle in the presence of URA staff and found that it had been vandalized.

- 10 The plaintiff notified the Manger Customs Business Centre Nakawa URA on 13th January that URA was liable to make good the losses.

- The plaintiff averred that he was humiliated and exposed to stress by the defendant's staff callous attitude and behavior. The plaintiff further averred that he has suffered loss of income owing to the fact that the suit vehicle is still in the defendant's possession. That he has been subjected to stress and anguish by the URA staff who have purportedly assumed they have the right to fix other parts in his vehicle without first having obtained his consent.
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During the scheduling, conference the following issues were framed for determination;

1. Whether the suit motor vehicle was vandalized at the defendant's premises.
2. Whether the defendant is responsible for the safe custody of the imported vehicle.
3. Whether the replaced parts are the requisite parts for the suit motor vehicle.
- 20 4. Whether the defendant is liable for the plaintiff's lost perspective income.
5. What remedies are available to the parties?

RESOLUTION OF ISSUES

I have read the submissions of both Counsel and the evidence that is before me.

- 25 From the evidence before me, the plaintiff imported a motor vehicle which was kept at a ware house. The inspection report clearly shows that the only thing that was missing was the main door switch. The defendant on 13th September 2013 instructed Coin Limited to send the car to

the defendant's customs warehouse in preparation for auction upon failure by the defendant to pay taxes for the car within the prescribed time. Consequently, the plaintiff on 6th January 2014 requested the defendant to change the auction status of the car to enable him pay the taxes due to the motor vehicle which was granted by the defendant. The plaintiff subsequently paid the taxes and the defendants issued a release order.

Issue One;

Counsel for the plaintiff submitted that the car was vandalized at the defendant's premises. According to counsel for the plaintiff, the suit vehicle was inspected by the bonded ware house Coin Ltd on 22nd November 2012, where the only fault noted was the main door switch which was missing as evidenced by the Vehicle Inspection Report.

That plaintiff inspected the suit vehicle in the presence of the defendant's staff and discovered that it had been vandalized as evidenced by the photos. That the plaintiff inspected the suit vehicle in the presence of URA staff and found that the missing parts had been replaced with inferior parts without consent. The plaintiff thus contended that it was at the URA customs ware house where the vandalization occurred which constituted negligence on the part of the defendant and therefore making the defendant liable for the vandalization.

Counsel for the defendant argued issue one and two concurrently. Counsel submitted that the letter to the defendant from the Manager of Coin Limited is to the effect that the Bond Keeper Coin Limited had a meeting with the plaintiff over the vandalization of the suit vehicle and he agreed to waive the demurrage charges on the premise that the plaintiff's car was vandalized at the bonded warehouse (Coin Uganda Limited) This infers that the alleged vandalization occurred at Coin Limited and therefore the claim should be followed up with the bond keeper and not the defendant.

Counsel for the defendant also submitted that the plaintiff's testimony also shows that the suit motor vehicle was vandalized on the instructions and or consent of the plaintiff at the customs bonded warehouse before the car was moved to URA customs warehouse. Counsel stated that the acts of removing these motor vehicles parts constitute vandalization of the motor vehicles.

Counsel for the defendant further submitted that it is highly probable that in the process of the break in at Coin Ltd through the passenger seats those parts like the dashboard and the radio were tampered with. Counsel also submitted that the plaintiff did not have a police report to corroborate his allegations of vandalization of the car. Counsel therefore concluded by saying
5 that the plaintiff failed to prove that the vandalization of his car occurred at the defendant's customs warehouse because it would at least have a police report to corroborate his allegations.

In rejoinder, Counsel for the plaintiff stated that it is wrong to equate the removal of vehicle parts by the clearing agent Patrick Ojangole as vandalization. That vandalization according to Black Laws Dictionary is defined as wilful or ignorant destruction of public or private property. That
10 the evidence showed that Patrick was an agent in charge of the vehicle on the plaintiff's behalf who removed the parts with the plaintiff's knowledge and that of Coin Ltd. Counsel further stated that the defendant did not prove any such rule of law which makes a police report mandatory before a civil claim can be filed.

The main point of contention between both parties is the place where the car was vandalized.
15 The plaintiff asserted that the motor vehicle was vandalized at the defendant's premises and thus the defendant is liable. The defendant on the other hand states that the vandalization was carried out by the taxing agent and Coin Ltd which towed the car to URA premises.

PW1 the plaintiff stated that when the car was taken to Coin Ltd, his clearing agent removed the side mirrors, the wheel caps, the jerk and the tool kits because these can be easily stolen. The
20 submission by counsel for the defendant that the vandalization occurred on the instruction of the plaintiff does not hold water. The claim brought by the plaintiff against the defendant is not in respect to the side mirrors, the wheel caps, the jerk and the tool kits which the plaintiff himself states were removed by his agent and he has them at home. I agree with Counsel for the plaintiff's that vandalization is an illegality and not something the plaintiff consented to. I am
25 thus unable to agree with counsel for the defendant that the alleged vandalization happened with the consent of the plaintiff.

Counsel for the defendant submitted that from their Annexure 'E' of their written statement of defence, a letter to the defendant from the Manager of Coin Limited is to the effect that the bond keeper Coin Limited had a meeting with the plaintiff over the vandalization of the suit vehicle

and he agreed to waive the demurrage charges on the premises that the plaintiff's car was vandalized at the bounded ware house. That the letter thus infers that the alleged vandalization occurred at Coin Limited and therefore the claim should be followed up with the bond keeper and not the defendant.

5 In his testimony, Mohamood Sekaba PW4 an employee of Coin Limited, stated that they opened the car using a wire because there was no key. That they broke through the car through the side of the passenger seat. That they put down the hand break so that the car would be pulled by the break down. That the car was thus loaded on a breakdown and was towed to URA customs ware house. This shows that Coin Limited caused some damage to the car. Kigamuzi Ibrahim – PW3
10 Manager Coin Ltd he stated that the plaintiff complained that the car had been damaged in the process of using the wire to open the car and using the breakdown to tow the vehicle to URA. He further stated that he decided to waive the demurrage fees which were owed to Coin Bonded Warehouse to be used to repair the car. This thus means that the money on their side was to repair the damages that were caused in the process of moving the car. This damage however is
15 not the subject of the plaintiff's claim.

Siraji Kigundu who works with M/S Toyota Uganda Ltd who testified as PW2 stated that he examined the car and noticed that the side mirror moulding case which should be silver-beige was instead replaced with a side mirror chrome casing, that from his experience, the dash board had been tampered with. He also stated that the AC system had been tampered with and replaced
20 with a manual one yet the vehicle is designed to use a digital one. This is the gist of the claim. The replacement of the side mirror moulding and the AC system and dash board cannot be due to damage caused to a car in the process of towing and cannot therefore the damage Coin Limited sought to compensate the plaintiff for.

PW1 testified that when the car was taken to the defendants customs ware house, he went to
25 inspect the car and found that everything in the car was intact. In fact, the motor vehicle inspection report shows that there was no Jack and Jack rod, tyre lever, tool kit, side mirrors and the ignition key. This as already explained by PW1 it was his agent who removed them when the car was still at Coin Limited.

The report further states that the unit was presented without a key and also failed to lock, and there are no switches. This is also explained by the evidence of PW3 who stated that they had to open the car with a wire put it on a break down because there was no key.

The inference I get from the evidence set out above is that the car arrived at the defendant's warehouse intact except from the explained alternations. In fact, Pw1 stated that he went to inspect the car at the defendant's Customs Warehouse and found everything in the car was intact.

Pw1 stated that he was called by his clearing agent and was told that the car had been vandalized. He went there saw the car was vandalized and also took photos to show the same. I have looked at the photos before me and there is a striking difference in the car as of before and that the car was at URA.

PW2 stated that he observed that the side mirror essay was replaced. He further stated that he observed through the windows that the AC nobles were not for that car. That he also observed that the dash board was tampered with.

Since the plaintiff had seen the state of the car when it was brought at the defendant's ware house and it was intact save for a few explainable alternations, there is in my view ample evidence to show that the car had been vandalized. Since it was not vandalized at the first ware house, that is Coin Limited, I am persuaded that the car was vandalized at the defendants ware house. I therefore find that the car was vandalized at the defendant's warehouse.

Issue Two:

Counsel for the plaintiff submitted that the defendant issued instructions to Coin Limited to move the vehicle into the defendant's customs warehouse. The car was moved to the defendants warehouse, the defendant received the vehicle from Coin and inspected it.

Counsel for the defendant submitted that if indeed the car was vandalized at the defendant's customs house, the proper party to be sued would have been the Commissioner Customs URA. They relied on section 5 (1) of the EACCMA which provides that;

“There shall be appointed, in accordance with Partner States' legislation, a Commissioner responsible for the management of Customs by each of the Partner States

and such other staff as may be necessary for the administration of this Act and the efficient working of the Customs”.

Counsel for the defendant submitted that the spirit of EACCMA envisages that in customs matters, proceedings should be brought against commissioner in the representative capacity and it is therefore flawed for the plaintiff to sue the defendant who has corporate personality and should not be sued for the actions of the Commissioner Customs or officers who the Act prescribes for purposes of the proceedings. Counsel further submitted that the defendant was wrongly sued and as such the consequences or benefits of litigation should not be suffered or enjoyed by the wrong party.

- 10 While Section 5 of the EACCMA creates the office of a Commissioner responsible for the management of customs, it does not stipulate that the commissioner is the person liable to be sued on the matters of customs.

- On the contrary, Section 43(2) of EACCMA provides that the Commissioner is not liable for any loss or damage occasioned to any goods deposited in the customs warehouse. On the other hand, 15 Section 2 of the Uganda Revenue Authority Act, Cap 196 establishes the authority and clearly states that the authority shall be capable of suing and being sued in its name.

In my view it is therefore clear that the defendant was rightly sued as there is no provision in the EACCMA that provides that it is the commissioner to be sued. I am of the view that the defendant was rightly sued and is liable for the vandalization of the plaintiff's car.

20 ***Issue Three;***

The plaintiff submitted that the car was received intact at the time it was deposited in Coin Bond. That it is also evident that the car was received intact at the time it was transferred to the URA site. That it is also evident that there was an attempt to replace the vandalized parts with non-genuine parts.

- 25 Counsel for the defendant stated that, it is premature for the plaintiff to assert that the replaced parts were not the requisite parts for the suit motor vehicle and yet the motor vehicle has not been subject to a more comprehensive inspection at Toyota Uganda.

The evidence of PW2 was to the effect that the side mirror which was beige was found replaced with a chrome side mirror casing at the time of inspection. That the dash board was tampered with, the AC had been replaced with a manual one yet the vehicle was designed to use a digital Ac system. This to me is enough evidence to show that the parts were replaced with inferior parts. If the AC system was digital and then it is replaced with a manual one, that shows that it is replaces with an inferior part. The side mirror moulding case was beige, but on observation, it was found that it was replaced with a chrome side mirror casing. This is also an inferior part. I agree that there is need for further scrutinizing as noted by PW2, but that does not rebut the fact that the car parts where replaced by inferior parts. In conclusion therefore, I agree with the plaintiff that there was an attempt to replace the genuine parts with the inferior parts.

Issue Four;

Pw1 stated that he had bought the car with the intention to hire out the car to tourists. That the vehicle would have been earning him \$ 200 each day of hire. Counsel for the defendant submitted that the plaintiff had never worked with a tour and travel company and as such, the figure of \$ 200 is merely speculative.

The plaintiff had not started hiring out the car, but it was his evidence that he intended to hire it out. At that level, all the plaintiff had was a plan. It's up to him to figure out how much he would hire out his vehicle notwithstanding the fact that he had not worked with a tour company before. Further, loss of future income is an aspect of general damages which does not have to be strictly proved like special damages. (see ***Robert Cuossens Vs Attorney General S.C. CIVIL APPEAL NO. 8 OF 1999***)

From my findings above, judgment is entered for the plaintiff in the following terms;-

1. UGX 20,695,700/= being the cost of replacement of vandalized parts as determined by M/S Toyota Uganda Ltd.
2. General damages of UGX 200,000,000/=.
3. Interest on 1 above of 25% p.a from date of filing the suit till payment in full.
4. Interest on 2 above of 20% p.a from date of judgment till payment in full.

5. Costs of the suit.

I so order.

5 **B. Kainamura**

Judge

26.10.2017