

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)  
CIVIL SUIT NO 113 OF 2011**

**OLAL BOSCO}.....PLAINTIFF**

**VERSUS**

- 1. NSEREKO LUCKY}**
- 2. AVON AFRICA INVESTMENTS}**
- 3. UGANDA REVENUE AUTHORITY}.....DEFENDANTS**

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

**JUDGMENT**

The Plaintiff commenced this action initially against the first and second Defendants to recover the principal sum of Uganda shillings 17,500,000/=, general and special damages for breach of the sale agreement, loss of business income, interest and costs of the suit. The foundation of the action is a sale agreement made on 7<sup>th</sup> January 2009 where the Plaintiff bought from the first Defendant motor vehicle registration number UAL 740 L, Tipper, Truck Dumper and took possession of the vehicle. The vehicle was initially sold by the second Defendant to the first Defendant. After taking possession of the motor vehicle the Plaintiff used it for transportation of goods for gain and profit and alleged that he had a net income of Uganda shillings 9,000,000/= per month. However when the Plaintiff submitted the registration logbook to Uganda Revenue Authority for purposes of effecting transfer of the vehicle into his names, Uganda Revenue Authority declared that the registration or the logbook was a fake one and cancelled it by punching a hole in it. Consequently the Plaintiff was unable to get the renewal of third-party insurance policy and on the 8<sup>th</sup> of May 2010 traffic police barred the motor vehicle from further operations on the road. By the time of filing the action the Plaintiff claimed loss of business, transfer fees paid to Uganda Revenue Authority and transportation fares and costs following up the matter in Kampala amounting to Uganda shillings 96,004,000/= as special damages.

The first Defendant never filed a defence and the matter proceeded against the first Defendant in default of a defence. Judgment was entered against the first Defendant for the sum of Uganda shillings 17,500,000/= and special damages of Uganda shillings 96,004,000/= together with interest, and costs of the suit from the date of judgment on the 24<sup>th</sup> of May 2011 until payment in full.

The matter proceeded against the second Defendant who raised a preliminary objection to the suit on the contention and ground that the Plaintiff does not disclose a cause of action against the second Defendant and the ruling of the court was issued on the 25<sup>th</sup> of May 2012. The crux of the ruling was that the Plaintiff discloses that by sale agreement made on 7<sup>th</sup> January 2009, the Plaintiff bought the vehicle, the subject matter of the suit, from the first Defendant. The vehicle had initially been sold by the second Defendant to the first Defendant and the Plaintiff took full possession of the vehicle and started using it for gain. The third-party insurance policy of the vehicle expired on the 4<sup>th</sup> of May 2010 and in the absence of an authentic certificate or logbook, the Plaintiff could not renew the statutory and mandatory third-party insurance policy. Consequently, the traffic police stopped the Plaintiff's vehicle from further operations on the road and the Plaintiff claimed consequential damages in the plaint as a result of non use of the vehicle.

The ruling of the court is that the basis of the claim against the second Defendant is the authenticity of the logbook. It is an assertion that the logbook is a fake one or a forgery but the Plaintiff did not disclose how the second Defendant is at fault for the alleged fake or forged logbook. Apart from the fact that Uganda Revenue Authority impounded the logbook and punched a hole in it, no further details as to why the logbook was considered a fake log book or a forgery are disclosed in the Plaintiff. The foundation of the suit against the second Defendant is the fact that the first Defendant sold the vehicle to the Plaintiff. I agreed with the objection to the extent that the sale agreement for the suit property was between the first Defendant and the Plaintiff. It is the first Defendant who bought the vehicle from the second Defendant. It was difficult to connect the second Defendant to the transaction of sale and it is clear from paragraphs 6, 7, 8, and 9, of the plaint that the Plaintiff had possession of the logbook and indeed commenced business with the lorry. However the logbook attached discloses that the vehicle is still registered in the names of the second Defendant and therefore the quarrel of the Plaintiff with the second Defendant arose from the logbook which was allegedly impounded because it was allegedly a fake logbook and consequently the problems generated by the alleged fake log book would be tried against the second Defendant.

The authenticity of the logbook is a matter for which the Plaintiff holds the Defendants liable jointly. Secondly the question also remained as to who was responsible for transferring the vehicle from the names of the second Defendant to the Plaintiff because the first Defendant is not the registered owner. The second Defendant's defence is that the vehicle logbook was issued by Uganda Revenue Authority and it is not liable for the act of impounding of the logbook. I held that this was a matter for trial on the merits of the suit and would not be handled as a preliminary point of law and on the basis averments in the Plaintiff. The issue of who is liable for the loss occasioned to the Plaintiff on account of failure to operate the business because the log book was impounded remained a controversy for trial.

The Plaintiff and the second Defendant filed a joint scheduling memorandum in which certain facts are agreed and need not be proved by additional evidence. The agreed facts are as follows:

In favour of the Plaintiff it was agreed that:

- a. By a sale agreement made on 7<sup>th</sup> January, 2009, the Plaintiff bought from the first Defendant motor vehicle registration number UAL 740 L Tipper/Truck Dumper at Uganda shillings 17,500,000/= fully paid and took possession of the said vehicle.
- b. That prior to the Plaintiff buying the said motor vehicle, it had initially been sold by the second Defendant to the first Defendant who had taken possession only and the logbook remained with the second Defendant waiting payment of the balance.
- c. That upon taking possession of the said vehicle, the Plaintiff used it for transportation of goods for gain.
- d. That upon the Plaintiff submitting the registration book for transfer, Uganda Revenue Authority declared that the logbook was fake and cancelled it and punched a hole in it. That the Plaintiff notified the first Defendant and reported the matter to Kiira Road Police Station.
- e. That when the third-party insurance expired on the 4<sup>th</sup> of May 2010 the Plaintiff was unable to renew it without the logbook in his name. That as a result the traffic police stopped the vehicle from further operations on roads and it was packed at Kitgum Central Police Station.
- f. That as a result of non-use of the said motor vehicle, the Plaintiff has been subjected to psychological torture, inconvenience and loss of viable business opportunities for which the Plaintiff prays for general damages and he has incurred costs.

For the second Defendant the following facts are agreed:

- a. That the second Defendant imported a white Isuzu Elf dumper truck, engine number 4BE1 – 166840, Chassis No. NKR588E - 7182577 (hereinafter the motor vehicle) into Uganda vide export certificate dated 14<sup>th</sup> of February, 2008, Bill of lading No. GNL/NMBA – 803 – 143 dated 27<sup>th</sup> of March, 2008.
- b. That the Defendant gave it's clearing agent, Penny International all their import documents for purposes of registering the motor vehicle in Uganda.
- c. That Penny International secured an assessment number 818 2877 dated 16<sup>th</sup> of December, 2008 for purposes of paying the requisite taxes and registration fees to the tune of Uganda shillings 4,154,101/=.
- d. That the second Defendant duly paid Uganda shillings 4,154,101/= at Stanbic bank, and the third-party (URA) issued a release order with all particulars, dated 16<sup>th</sup> of December 2008.

- e. That upon presentation of the release orders the third-party (URA), registered motor vehicle as UAL 740L and issued a logbook number 521038 in the second Defendant's names.
- f. That the second Defendant further paid Uganda shillings 613,650/= to Kampala Modernity Ltd being storage charges for the motor vehicle since its importation into Uganda until the release from the bond.
- g. That the second Defendant wrote to the third-party (Uganda Revenue Authority), on 22<sup>nd</sup> December, 2010 requesting it to issue a new logbook after receiving complaints from the first Defendant that its logbook was destroyed by officers of the third-party (Uganda Revenue Authority) on grounds that it was fake or forged.
- h. That the second Defendant agreed to the fact that it sold the said motor vehicle to the first Defendant, handed over to him duly signed transfer forms, the logbook, and the first Defendant possession of the motor vehicle thereof.

The second Defendant took out third party proceedings against Uganda Revenue Authority on the ground that it was the one which issued a logbook. The issue of loss on account of impounding the log book of the suit property remained pending determination by this court. The third party notice had been issued on 15<sup>th</sup> of August 2011. In the written statement of defence of Uganda Revenue Authority, the third-party averred that the second Defendant is the registered proprietor of the suit property. Secondly it is not a party to the sale of the motor vehicle and there was no cause of action against it. Thirdly the second Defendant is not entitled to indemnification from the third-party.

In the course of the proceedings, negotiations were carried out between the Plaintiff and the third party and the third-party admitted having impounded the logbook for the suit vehicle and consequently issued a new logbook for the suit property. Negotiations between the Plaintiff and the third Defendant were not successful. Counsel for the Uganda Revenue Authority submitted in the court that it was an admitted fact that the logbook was cancelled on the ground that it was presumed to be forged. On 23<sup>rd</sup> January, 2012 a new logbook was issued to the Plaintiff having realised that the issued logbook was cancelled in error because it was not forged but a genuine logbook. The parties namely the plaintiff and 3<sup>rd</sup> Party sought adjournments to negotiate on the issue of quantum. The suit was sent again before court annexed mediation on the 26<sup>th</sup> of May 2014. Mediation failed and trial proceedings commenced on the 19<sup>th</sup> of May 2015. The Plaintiff gave his partial testimony on 19<sup>th</sup> May, 2015 and thereafter several adjournments were sought until the second Defendant's Counsel prayed that the court be addressed in written submissions on the basis of materials on record. The Plaintiff's suit was closed and the second Defendant's prayer to file written submissions on the basis of the evidence adduced as far as was granted and a schedule for filing written submissions issued.

In the last proceedings the Plaintiff is represented by Counsel Charles Dalton Opwonya while the second Defendant is represented by Counsel Anthony Wabwire.

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The second Defendant's Counsel submitted that the remaining issue was whether the Plaintiff is entitled to damages and costs and if so from whom?

I have carefully considered the submissions. The second Defendant's Counsel principally reiterated submissions made when a preliminary objection was raised that the plaintiff disclosed no cause of action against the second Defendant. He contended that the Plaintiff was issued with a new logbook and the Plaintiff admitted this fact. He submitted that under section 57 of the Evidence Act Cap 6 laws of Uganda, there is no need to prove the admitted fact that the Plaintiff was issued the new logbook and this principle was applied in the case of **Kamugisha Lenard versus Uganda Revenue Authority HCCS number 311 of 2012**. He submitted that the second Defendant was entitled to judgment following the admission that the third-party who issued the Plaintiff with a new logbook and took responsibility for impounding it. In effect the third-party admitted liability for the damages, if any, arising from its erroneous impounding and cancellation of the Plaintiff's logbook. Secondly, the Plaintiff upon replacement of the logbook unequivocally admitted in his evidence in chief and cross examination that he has no claim whatsoever against the second Defendant. The third-party having agreed to replace the Plaintiff's logbook is barred by the doctrine of estoppels from further asserting that it was irregularly procured by the second Defendant. In the premises the Plaintiff is not entitled to any relief whatsoever against the second Defendant and the suit against the second Defendant ought to be dismissed with costs. Furthermore the Defendant's Counsel submitted that in the unlikely event that the court finds that the Plaintiff is entitled to any reliefs, that relief should be sought against the third-party. Alternatively, the second Defendant through the third party's submission duly established its equitable entitlement to indemnification by the third-party in case of any reliefs recoverable by the Plaintiff in the suit.

In reply, the Plaintiff's Counsel agreed with most of the arguments of the second Defendant's Counsel. He submitted that the second Defendant was in breach of a statutory duty owed to the Plaintiff to transfer the motor vehicle to the Plaintiff within two weeks under section 31 (1) of the Traffic and Road Safety Act, 1998 which deals with sale and transfer of registered vehicles. He contended that this was the main reason why the Plaintiff did not have the vehicle registered in his names and all the issues which came thereafter leading to the losses the Plaintiff suffered. The Plaintiff had to depend on the second Defendant to provide explanations that he should have confidently provided by himself. Secondly the provision creates a criminal offence for violation thereof.

As far as remedies are concerned the Plaintiff's Counsel prayed for a sum of Uganda shillings 675,000,000/= in special, general and exemplary damages. He relied on the case of **Mohammed Mwanga versus Lint Marketing Board (in Liquidation) Civil Appeal Number 15 of 1998** where the Court of Appeal was persuaded that although specific damages were not specifically pleaded, if evidence is led and is unchallenged the court can still grant it.

The Plaintiff's Counsel further relied on the case of **Bank of Uganda versus Betty Tinkamanyire Supreme Court Civil Appeal number 12 of 2007** where the court reviewed the evidence and held that general damages were correctly awarded. It was further held that the court was justified in awarding punitive damages in light of the humiliation suffered by the respondent on her return from abroad on official duty only to find her successor seated in her chair.

The Plaintiff's Counsel submitted that the illegalities and wrongs of the appellant were compounded further by lack of compassion, callousness and indifference to the good and devoted services the appellant had rendered to the bank. After her unlawful dismissal the appellant's officers carried on an enquiry to the respondent's history of employment and performance. He extensively reproduced a judgment and reiterated prayers that the court enters judgment for the Plaintiff and in other words special damages, general damages and exemplary damages in the overall sum of Uganda shillings 675,000,000/= as well as costs of the suit.

In the written submissions of the third-party, it is contended that by the time of filing the suit in 2011, the second Defendant was the registered proprietor of the suit vehicle. However the motor vehicle had earlier been sold to the first Defendant who did not effectively transfer it into his names despite having been duly signed transfer forms by the second Defendant. The first Defendant subsequently sold the unit to the Plaintiff and handed him transfer forms in the names of the second Defendant. When the Plaintiff made an application for transfer sometime in April 2010, the third-party refused it on grounds that the logbook was not authentic. The logbook presented by the Plaintiff was of a different font from the font the third-party uses in printed logbooks, and that is why the logbook was rejected in the first instance. The third-party later discovered that the logbook had been printed at its Human Resource Centre and therefore it was genuine. The third-party upon realising its genuine mistake of fact agreed to compensate the Plaintiff but he deliberately refused the offer. The third-party contends that due to the very many forged logbooks in circulation, it was very cautious in dealing with logbooks. On the 8<sup>th</sup> of May 2010 the motor vehicle was stopped from further operations on the road since the third-party insurance policy had expired on the 4<sup>th</sup> of May 2010.

Counsel for the third-party submitted that no damages were suffered by the Plaintiff as a result of the cancellation of the logbook and the suit was being used by the Plaintiff as a ploy to unjustly enrich himself. In the premises the second Defendant is not entitled to indemnification by the third-party and the Plaintiff is not entitled to the damages sought.

The third party's Counsel submitted that the Plaintiff has no cause of action against Uganda Revenue Authority and the second Defendant is not entitled to indemnity. He relied on the principles for establishing whether a plaint discloses a cause of action and authorities therefore that I do not need to go into. He relied on the judgment of Hon. Lady Justice Elizabeth Musoke in **Okot Ayere Olwedo Justin vs. Attorney General Civil Suit No. 381 of 2005**. He contended that the pleadings do not show any contractual relationship between the Plaintiff and the third-

party but shows a contractual relationship between the Plaintiff and the first Defendant and the second Defendant. The plaint was never amended nor was the third-party made a Defendant and as such the plaint does not disclose a cause of action against the third-party. He further cited the definition in Black's Law Dictionary, of 'indemnity' which means to reimburse for loss suffered on account of the third parties acts and defaults. Indemnity creates a duty to make good any loss and the right of the injured to claim such reimbursement. He contended that PW1 during cross-examination admitted that the second Defendant did not make an error and the second Defendant served Uganda Revenue Authority with third-party notice seeking to be indemnified. It also submitted that the Plaintiff is not entitled to any remedies. Based on that authority, the second Defendant is not entitled to any contribution from the third-party since it is not under any legal obligation to pay the Plaintiff.

The third-party on the question of remedies submitted that the pleadings disclose that the Plaintiff's claim for loss arises as a result of non-use of the motor vehicle and is a special damage. She relied on **Uganda Telecom Limited versus Tanzanite Corporation Civil Appeal Number 17 of 2004** for the proposition that special damages cannot be recovered unless it has been specifically claimed and proved or unless the best available particulars or details have before the trial been communicated to the party against whom it is claimed. PW1 relied on the business records to prove his claim for special damages. The records were not attached to the pleadings and as such the third-party and the second Defendant objected to the admissibility of the documents under Order 7 rule 18 of the Civil Procedure Rules. He contended that in cross examination the Plaintiff could not tender the documents when he does not know where they were made and therefore they were cooked up. Furthermore on the question of general damages Counsel relied on **Uganda Revenue Authority versus David Kitamirike Civil Appeal Number 43 of 2010** for the proposition that general damages are awarded by the court at large and after due court assessment. They are compensatory in nature in that they should offer some satisfaction to an entitled Plaintiff.

The Plaintiff bought the car on 2<sup>nd</sup> January 2009 and he packed it on 8<sup>th</sup> September, 2010. The insurance had expired on the 4<sup>th</sup> of May 2009. The car was impounded by the police since the insurance had expired. The Plaintiff testified that he could not renew because the logbook was in the box and he was away. He admitted that he had not transferred the logbook and they could still have renewed his third-party insurance. It followed that the Plaintiff occasioned the loss to himself by failing to review the third-party insurance and is not entitled to general damages.

I have carefully considered the submissions of Counsels. The Plaintiff submission is that the second Defendant was in breach of a statutory duty to transfer the vehicle to the Plaintiff. This submission is defeated by the evidence that the second Defendant had signed transfers in favour of the first Defendant when the first Defendant bought the vehicle from the Plaintiff. The question was therefore whether the second Defendant was under any obligation to the Plaintiff. The evidence is quite clear that there was no contractual relationship between the Plaintiff and  
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the second Defendant. The second Defendant sold the vehicle to the first Defendant and executed transfers in favour of the first Defendant. It is the first Defendant who sold the vehicle to the Plaintiff.

While the second Defendant did not adduce evidence through witnesses, there are agreed facts in favour of the second Defendant which proves these facts in terms of section 57 of the Evidence Act. The following are agreed facts in favour of the second Defendant namely: The second Defendant imported a white Isuzu Elf dump truck, engine number 4BE1 – 166840, Chassis No. NKR588E - 7182577 into Uganda vide export certificate dated 14<sup>th</sup> of February, 2008, Bill of lading No. GNL/NMBA – 803 – 143 dated 27<sup>th</sup> of March, 2008. The Defendant gave it's clearing agent, Penny International all their import documents for purposes of registering the motor vehicle in Uganda. Penny International secured an assessment number 818 2877 dated 16<sup>th</sup> of December, 2008 for purposes of paying the requisite taxes and registration fees to the tune of Uganda shillings 4,154,101/=. The second Defendant duly paid Uganda shillings 4,154,101/= at Stanbic bank, and the third-party (URA) issued a release order with all particulars, dated 16<sup>th</sup> of December 2008. Upon presentation of the release order the third-party (URA), registered the motor vehicle as UAL 740L and issued a logbook number 521038 in the second Defendant's names. The second Defendant further paid Uganda shillings 613,650/= to Kampala Modernity Ltd being storage charges for the motor vehicle since its importation into Uganda until the release from the bond. The second Defendant wrote to the third-party (Uganda Revenue Authority), on 22<sup>nd</sup> December, 2010 requesting it to issue a new logbook after receiving complaints from the first Defendant that its logbook was destroyed by officers of the third-party (Uganda Revenue Authority) on grounds that it was fake or forged. The second Defendant agreed to the fact that it sold the said motor vehicle to the first Defendant, handed over to him duly signed transfer forms, the logbook, and the first Defendant took possession of the motor vehicle thereof.

The crux of the Plaintiffs case is therefore not about transfer into his names but the fact that the logbook was impounded for reasons of being fake. It was the contention in the plaint that the Plaintiff upon submitting the registration logbook for transfer to the third-party it deregistered the logbook as fake. The Plaintiff immediately notified the first Defendant and also reported the matter. The third-party insurance policy of the motor vehicle expired on the 4<sup>th</sup> of May 2010 and the Plaintiff could not renew it and as a result on the 8<sup>th</sup> of May 2010 the police stopped the motor vehicle from further operations on roads. These facts are explicitly pleaded in paragraphs 8 to 12 of the plaint.

The second Defendant's case is that it had no relationship with the Plaintiff and this appears to be so except for the fact that the logbook was admittedly obtained by the second Defendant. The Plaintiff had no way of knowing why the logbook had been impounded and therefore did not associate it with the authority namely the third-party which impounded it. Instead he brought an action against the first and second Defendants for giving him a logbook which was not genuine.

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The Plaintiff's Counsel relied on section 31 (1) of the Traffic and Road Safety Act 1998 cap 361 for the submission that the second Defendant was in breach of a statutory duty to transfer the motor vehicle within two weeks after sale. The provision requires a person who sells or disposes of a motor vehicle to within 14 days after the sale or other disposition notify in the prescribed form the licensing officer of the transaction. The transaction in question as far as the second Defendant is concerned is between the first Defendant and the second Defendant. The Plaintiff is not privy to the transaction.

An analysis of the facts and circumstances clearly demonstrate that the logbook was impounded not because of non-compliance with section 31 of the Traffic and Road Safety Act (supra) but for being a fake log book. This is admitted by the third-party. Secondly the case of the Plaintiff is not about non-compliance with statutory provisions but for being availed with a fake logbook. The second Defendant filed an action against the third party for having issued the book. He asserted that the logbooks were issued by the third-party and it is not liable to the Plaintiff. That is the crux of the issue. The Plaintiff has proved on the balance of probabilities that the logbook of his vehicle had been impounded for being fake. This was admitted by the third-party which was sued by the second Defendant. It is therefore proved that the Plaintiff was issued with a logbook that was erroneously impounded by the third-party. The logbook was issued by the third-party. It follows that the second Defendant cannot be held accountable for the issuance of the logbook.

Finally as far as the background is concerned the ruling of the court dated 25<sup>th</sup> of May 2012 as to whether the plaint discloses a cause of action against the Defendant left one issue for consideration as against the second Defendant. At page 10 of the ruling I explicitly stated that the question for the court to determine is on whom to blame the impounding of the logbook. It was also noted that the second Defendant averred that the obtaining of the logbook was left to its clearing agent. It was not determined whether the logbook was fake or not. I held that this required evidence and should be determined on the merits. Last but not least the second Defendant had taken out third party proceedings against Uganda Revenue Authority on the basis that it was the one which issued a logbook and the issue remained open for determination of the court.

In the second Defendant's written submissions the first issue is whether the Plaintiff is entitled to damages and costs and if so from whom.

The second Defendant has proved that the logbook which was impounded was erroneously impounded by Uganda Revenue Authority. Secondly it was issued by Uganda Revenue Authority as admitted by the third-party. It follows that the second Defendant is not liable to the Plaintiff on any ground. As I have noted above, the question before the court is not whether the second Defendant fulfilled its statutory duty to notify Uganda Revenue Authority about sale of the vehicle to the first Defendant. The crux of the Plaintiff's case is that the logbook had been

impounded and he was unable to operate the suit vehicle because it was also stopped by the police on account of failure to have third-party insurance which could not be issued because there was no logbook. In the premises, the second Defendant is not liable to the Plaintiff and the suit against the second Defendant stands dismissed with costs.

This leads to the most incredible part of these proceedings. In the Plaintiff's submissions, the Plaintiff holds the Defendants liable without specifying which Defendant is liable. The suit went through protracted pre-trial proceedings. I have carefully considered the record on 26<sup>th</sup> April, 2012 the matter was mentioned and the issue was raised as to whether the Plaintiff should join Uganda Revenue Authority as a Defendant. The Plaintiff was represented by Counsel Anne Kobusingye. The notes clearly indicated that I raised the issue and indicated that the question needed to be considered as to who is liable for the motor vehicle being impounded this is in light of the admission of the second Defendant's Counsel that the logbook had now been issued and the car was released. It is the revenue officials who impounded the logbook and punched holes into it. And the question was if the objection that there was no case against the second Defendant succeeded, what happens to the third party? Counsel Anne Kobusingye submitted that there was no direct cause of action against Uganda Revenue Authority and no action was taken to make it accountable for what happened in the pleadings. The second Defendant then raised an objection and the ruling was delivered on the 25<sup>th</sup> of May 2012. Subsequent to the ruling, there were further pre-trial proceedings in which the matter kept recurring. Judgment had been obtained against the first Defendant in default of a defence and the matter went for conferencing under Order 12 rule 1 of the Civil Procedure Rules to narrow down the issues by getting points of agreement and disagreement and exploring the possibility of resolving the suit through ADR.

Subsequently Counsel Jude Otim Etyang took over the conduct of the Plaintiff's suit from Counsel Anne Kobusingye. Again Counsel Joseph Anguria appeared for the Plaintiff on 12<sup>th</sup> March, 2013. It was intimated that Uganda Revenue Authority was willing to consider an out of court settlement and the matter was adjourned. No action was taken by the Plaintiff's Counsel to amend the pleadings to include a claim against Uganda Revenue Authority even when negotiations were going on between the parties. The touchy issue between the negotiating parties notified to court related to the question of quantum of compensation to the Plaintiff. Several adjournments were sought by the Uganda Revenue Authority lawyers to enable the processes of the Uganda Revenue Authority to work and consider the question of settlement. However, mediation and negotiations failed and the suit was fixed for hearing.

By the 26<sup>th</sup> of May 2014 Counsel Charles Dalton Opwonya took over the conduct of the Plaintiff's case. Again the question of whether the Plaintiff had any cause of action against the third party was raised when the suit was mentioned to establish whether it should go for trial or be negotiated by the parties. Counsel sought an adjournment for time to take appropriate action to remedy the situation because the initial lawyers who handled the case sued only the first and second Defendants. He also noted in his address to court that it was clear that the first and second

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Defendants have no hand in the impounding or causing the impounding of the logbook so he applied for an adjournment to make the relevant applications to have the matter remedied in the pleadings. There was no objection from Counsel for the third party to the adjournment.

Thereafter no further application was made and the suit was heard on the merits.

It is clear from the submissions of the second Defendant's Counsel and the third-party and from my assessment of the record that the remaining issue is whether the Plaintiff has a cause of action against the third Party Messrs Uganda Revenue Authority.

I must say that the Plaintiff's lawyers were given several opportunities to the extent that the court went outside the usual bonds of a proactive judge to enable the plaintiff rectify the procedural problem which had been raised again and again by the third-party and the second Defendant's Counsel. I stayed a preliminary consideration on the issue because Counsel Dalton Opwonya eventually submitted that he would avail an authority to court which holds that the Plaintiff can proceed against the Third Party without amendment of pleadings. The procedural question cannot be avoided to assist the Plaintiff and the question is whether the court can hold the Third Party liable to the Plaintiff when there is clearly no suit made out against the first Defendant and the second Defendant.

Doing the best I can, I have considered the law as far as concerns proceedings against third parties. Starting with the Civil Procedure Rules, third party proceedings are taken out by Defendants who have been sued. The provisions of Order 1 rules 14 – 19 of the Civil Procedure Rules are explicit about the nature of the proceedings. It is a Defendant who claims to be entitled to contribution or indemnity against any person not a party to a suit who may with leave of court issue a notice to that effect. Order 1 rule 14 provides as follows:

“14. Notice to third party.

(1) Where a Defendant claims to be entitled to contribution or indemnity over against any person not a party to the suit, he or she may, by leave of the court, issue a notice (hereafter called a “third party notice”) to that effect.”

The Second Defendant duly issued a third party notice to Uganda Revenue Authority (aka URA) and URA filed a defence to the action for contribution or indemnity. Order 1 rules 15, 16 and 17 deal with default of a third party to file a defence to the action of the Defendant and judgment in default. However it is necessary to note that judgment in default as against a third party who has filed no defence can only be entered where there is a judgment against the Defendant who issued the third party notice. For purposes of clarity on the issue Order 1 rule 17 provides as follows:

“17. Judgment after trial against third party in default.

Where a third party makes default in entering an appearance in the suit, in case the suit is tried and results in favour of the Plaintiff, the court may either at or after the trial enter such judgment as the nature of the suit may require for the Defendant giving notice against the third party; but execution of the judgment shall not be issued without leave of the court, until after satisfaction by the Defendant of the decree against him or her; and if the suit is finally decided in the Plaintiff's favour, otherwise than by trial, the court may, upon application ex parte supported by affidavit, order such judgment as the nature of the case may require to be entered for the Defendant giving the notice against the third party at any time after satisfaction by the Defendant of the decree obtained by the Plaintiff against him or her."

The rule envisages proceedings against the third party after the Defendant is found liable and I do not need to elaborate on it. The rule is clear and speaks for itself. The liability of the third party may also be tried in the suit in such manner as the court may direct. Again Order 1 rule 18 of the Civil Procedure Rules envisages judgment in favour of the Defendant who gave the notice to the third party and against the third party and not judgment for the Plaintiff. Order 1 rule 18 of the Civil Procedure Rules provides as follows:

"18. Appearance of third party, directions.

If a third party enters an appearance pursuant to the third party notice, the Defendant giving the notice may apply to the court by summons in chambers for directions, and the court, upon the hearing of the application, may, if satisfied that there is a proper question to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the Defendant giving the notice, to be tried in such manner, at or after the trial of the suit, as the court may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the Defendant giving the notice against the third party."

The above rule is clear that as far as the third party is concerned the issue is tried between the third party and the Defendant giving the third party notice.

Finally Order 1 rule 19 deals with costs occasioned by the third party proceedings and provide that:

"19. Costs.

The court may decide all questions of costs between a third party and the other parties to the suit and may make such orders as to costs as the justice of the case may require.

The question of costs depends on the outcome of the proceedings in the overall result. I have considered the judicial authority relied on by the Plaintiffs Counsel namely the case of **Bank of Uganda vs. Betty Tinkamanyire, Civil Appeal No. 12 of 2007**. It is clear from the submission and the decision of the court that the court before assessing damages considered the evidence and pleadings.

What is lacking in the Plaintiffs suit as against the third Party is a pleading or averment making the third party liable. The authorities cited by the Plaintiff's Counsel are distinguishable on this point. The submissions on specific damages which are not pleaded are also misplaced and distinguishable because they deal with damages against a Defendant found liable and not a non party to the suit. I must emphasise that damages are ordered against a party who has been sued and not against a party against whom no claim has been made. A party against whom a claim has been made in the pleadings can file a defence against it.

Finally there are several common law precedents which reinforce the Ugandan Civil Procedure Rules and specifically Order 1 rules 14 – 19 of the Civil Procedure Rules that hold that third party proceedings are independent of the main suit between the Plaintiff and the Defendant and are between the Defendant giving the third party notice and the third party.

In **Stott v West Yorkshire Road Car Co Ltd and another (Home Bakeries Ltd and another, third parties) [1971] 3 All ER 534** Lord Denning MR at 537 held that once the Plaintiffs suit is completed by settlement, that is not the end of the matter the third party suit brought by the Defendant can proceed in the self same way on the merits and independently he said:

“I turn now to the point of procedure. It was said that in consequence of the settlement, the original action is dead, and being dead, there is nothing on which the third party proceedings can bite. I cannot agree with this contention. It is answered by reference to s 39(1)(b) and (2) of the Supreme Court of Judicature (Consolidation) Act 1925 and RSC Ord 16, r 4(3)(b). As I read those provisions, once the action itself is settled, the third party proceedings can proceed in just the selfsame way as if they had been started by a separate action.”

In the case of **Myers v N & J Sherick Ltd and others [1974] 1 All ER 81** Goff J held at pages 85 - 86 that the issue between the Defendant and the third party can be tried afresh as a separate action he said:

“The Plaintiff's argument, however, goes further. Counsel says there are no common issues, and provided the Defendants do not compromise without the consent of the firm, but properly fight the action and lose, then the judgment will be conclusive against the firm as to the Defendants' liability to the Plaintiff and the quantum of damage. In my judgment, however, that is not so. In their claim for breach of duty, the Defendants must prove their loss, and the firm, if not brought into the main action as third parties will not

*Decision of Hon. Mr. Justice Christopher Madrama Izama \*^\*~ \*&\*\$\$# xtra+ maximum735securityx 2017 style*

be bound by the judgment in it, but will be free to dispute the extent of the Defendants' true liability. In particular, in my view, it will be open to the firm to argue afresh the point taken in the defence to the main action that the Plaintiff is not entitled to sue on the implied covenants, because of alleged illegality in connection with the statement of the consideration and the stamping of the transfer."

In other words the judgment obtained by the Plaintiff is not binding on the third party. The issue of the third party being liable to indemnify or contribute to the payment of the Defendant's liability is tried in its own right. What happens if the Defendant giving the third party notice is not found liable? Finally in **Johnson v Ribbins and others (Sir Francis Pittis & Son (a firm), third party) [1977] 1 All ER 806**, it was held that the general rule even in third party proceedings is that in the exercise of discretion by the court on the question of costs, costs should follow the event. The other question is: event of what? The general rule envisages a suit between the parties and therefore costs should follow the outcome of the suit.

Before taking leave of the issue the question is whether the Plaintiff even without considering the evidence discloses a cause of action against the third party. The general principle is that a claim which is not claimed in the Plaintiff cannot be proved. A pleading is what a party seeks to prove as a ground or attack or as a defence. I agree with the submissions of the third party's Counsel that for there to be a cause of action three ingredients should be disclosed. In **Auto Garage and others v Motokov (No 3) [1971] 1 EA 514** the Court of Appeal for East Africa per Spry V-P at page 519 defined a cause of action to mean:

"I would summarize the position as I see it by saying that if a plaintiff shows that the Plaintiff enjoyed a right, that the right has been violated and that the Defendant is liable, then, in my opinion, a cause of action has been disclosed and any omission or defect may be put right by amendment. If, on the other hand, any of those essentials is missing, no cause of action has been shown and no amendment is permissible."

The Supreme Court of Uganda in **Major General David Tinyefunza vs. Attorney General of Uganda Constitutional Appeal No. 1 of 1997** and in the judgment of Wambuzi, C. J cited with approved a similar definition of a cause of action by **Mulla on the Indian Code of Civil Procedure, Volume 1, and 14<sup>th</sup> Edition** page 206 that:

"A cause of action means every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove the facts but

every fact necessary for the Plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the Defendant a right to an immediate judgment must be part of the cause of action. It is, in other words, a bundle of facts, which it is necessary for the Plaintiff to prove in order to succeed in the suit. But it has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It is a media upon which the Plaintiff asks the court to arrive at a conclusion in his favour. The cause of action must be antecedent to the institution of the suit.”

According to **Attorney General vs. Oluoch (1972) 1 EA 392** the facts disclosing a cause of action must be alleged in the Plaint together with any attachments forming part of it and the Court assumes that the facts alleged in the plaint are true.

In the Plaintiff’s plaint not a single averment of fact or law is disclosed against Uganda Revenue Authority, which is the third party. In the premises the Plaintiff never sued the third party and there is no issue for trial between the Plaintiff and the third party. An issue of fact or law in controversy is clearly defined by Order 15 Rule 1 to mean an allegation of fact or law affirmed by one party and denied by another. Order 15 rule 1 of the Civil Procedure Rules provides as follows:

“1. Framing of issues.

(1) Issues arise when a material proposition of law or fact is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a Plaintiff must allege in order to show a right to sue or a Defendant must allege in order to constitute a defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.”

In the premises there is no issue in controversy arising from the pleadings to determine as between the Plaintiff and the third-party. As far as the claim for indemnity is concerned, because there is no case made out against the second Defendant by the Plaintiff, the second Defendant has no claim for indemnity or contribution against the third-party.

In the premises the following orders follow and are issued namely:

1. The Plaintiff's suit against the second Defendant stands dismissed with costs.

2. The Plaintiff's suit against the first Defendant which resulted in a default judgment against the first Defendant cannot stand. The default judgment against the first Defendant is unjust and is accordingly set aside.
3. The third party notice and proceedings against the Uganda Revenue Authority cannot stand and are dismissed with each party namely the second defendant and the third party to bear its own costs.

Judgment delivered in open court on the 10<sup>th</sup> of January 2017

**Christopher Madrama Izama**

**Judge**

Judgment delivered in the presence of:

Counsel Ronald Baluku for the Third Party

Counsel Anthony Wabwire for the Second Defendant

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

10<sup>th</sup> January, 2017