

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA IN KAMPALA
(COMMERCIAL DIVISION)

CIVIL SUIT NO. 224 OF 2014

KYOTERA VICTORIA FISHNETS LIMITED:.....: PLAINTIFF

VERSUS

- 1. THE COMMISSIONER GENERAL, UGANDA REVENUE AUTHORITY**
- 2. UGANDA REVENUE AUTHORITY :.....:DEFENDANTS**

BEFORE: THE HON. JUSTICE DAVID K. WANGUTUSI

JUDGMENT

The Plaintiff, Kyotera Victoria Fishnets Company Limited sued the Commissioner General, Uganda Revenue Authority and Uganda Revenue Authority, hereinafter referred to as the 1st and 2nd Defendants for declarations that the Defendants were in breach of a Consent Decree in Civil Suit 312 of 2012 dated 6th July 2013, return of goods seized or their value, General Damages, exemplary damages and costs.

The background to this suit is simple and straight forward as indicated in the agreed facts and other pleadings as follows;

On the 3rd May 2012, the employees of the 2nd Defendant acting in their capacity as the Revenue Authority intercepted and seized Container NO. PC 14458345/7 belonging to the Plaintiff.

This container, contained a consignment of 950 cartons of Fishing Twines, 55 bales of Fishing nets and 3 pieces of 32 inch LCD Televisions.

Six days later specifically on the 9th May 2012 the employees of the 2nd Defendant raided the Plaintiff's store at Shumuk Ware House at Nakawa-Banda at Plot 551M and conducted a search in the presence of the Plaintiff's representatives. The Defendant reduced the findings into a Certificate of search which was signed by both parties.

The Defendants contending that there were unpaid tax, sealed the warehouse. The Defendants however on July 6th, 2012 in the absence of the Plaintiff re-entered the warehouse and seized all the goods which included 6900 boxes of 50 pieces of Fishing twines (Nylon) 268 boxes of 250 pieces of Nylon twines and various Fish nets.

The Defendant followed this with a seizure notice.

The Plaintiff being aggrieved sued the Defendants in Civil Suit No.312 of 2012, citing unlawful seizure and seeking recovery.

On the 12th March 2013 the parties reached an amicable settlement which they reduced with a consent judgment subsequently signed by the Chief Magistrate Nakawa.

The parties agreed to the following among others;

1. The Plaintiffs pay to the Defendant the total principal tax of UGX 15,031,338 and a penalty of US\$ 2000 (equivalent of UGX 5,303,780/=) all totalling to UGX 20,335,118/=assessed as due and payable on consignment of imported goods on container No. PC 144583457 comprising of 55 bales of Nylon Fish nets from Korea, 950 cartons of fish twine from China and 3 LCD television sets, size 32 from China in full and final settlement of all claims in the above Civil Suit No. 312 of 2012.
2. The above total amount shall be paid by the Plaintiff immediately upon the signing of this consent, in default of which the whole amount shall be recoverable with interest thereon of 2 percent per month.
3. Upon full payment of the total amount of UGX 20,335,118, the Defendants shall immediately release the above mentioned goods to the Plaintiffs.
4. It is agreed that after interparty reconciliation meetings between the parties, the Defendants have since released in advance to the Plaintiffs free of all charges, 796 (seven hundred Ninety Six) bales of fishnets and 6,304 (six thousand three hundred and four) cartons of fish twines seized in July 2012 from the Plaintiff's store at Shumuk on Plot 551 M, Jinja Road, Nakawa.

There were other paragraphs upto 14 dealing with withdrawal of appeals, applications and abandonment of costs running from paragraph 5 to 14.

The 15th paragraph concluded in these words;

“15. The above settlement resolves once and for all legal or equitable claims whatsoever between the parties herein, pending in any Court of Law or contemplated and arising from the transactions giving rise to the dispute involved and neither party shall renege on the terms hereof and further steps shall be taken to conclude incidental actions envisaged herein upon the signing of this principal comprehensive consent decree.”

By the paragraphs above clearly indicated how much money was to be paid and in respect of what items.

They also listed the items involved. The agreement listed the goods already released to the Plaintiff as of 12th March 2013 as hereinbelow;

1. 796 bales of fishnets.
2. 6,304 cartons of fish twines.

Paragraph 1 listed the items to be released on payment of tax and penalty as;

1. 55 bales of Nylon Fish nets.
2. 950 cartons of fish twine.
3. 3 LCD television sets, size 32.

Both the parties are agreed that the Plaintiff paid Shs. 20,335,118/= as assessed and the release of the seized items commenced.

The Plaintiff contended that not all the items were released. The Defendants on their part denied the allegations and stated that they released all the items to the Plaintiff.

The issues agreed upon for dissolution as agreed by both parties were;

1. Whether all the goods intercepted and seized by the Defendants were released to the Plaintiffs.
2. If not, what is the value of the goods not released to the Plaintiff?
3. Remedies available.

That payment was made as agreed is not in dispute. What is in dispute is whether all the goods were released.

The quantity of goods seized is also not in dispute. DW.1 Margaret Mukasa told court that among the items seized was a consignment comprising 55 bales of nylon fishnets, 950 cartons of fishing twine and 3 LCD, 32 inch televisions.

She further stated that some of the packages burst open, she said in paragraphs 2.3.

“The cargo/goods were received at about after 5p.m on the 26th July 2012. At the time of arrival, we were short of man power to offload it from the trucks. Due to the nature of the operation, and the quantity of the goods, coupled with the time of arrival, some of the boxes gave way and the twine, which was in the boxes poured in the ware house.”

This piece of evidence by DW.1 explains why the Plaintiffs were asked to provide sacks in which the goods that had poured in the ware house.

The release of goods began in October 2012. According to her whatever difference in quantity was artificial because in the repackaging the numbers changed. Interestingly it is the same DW.1 who told court that it was acknowledged that 80 boxes had been damaged or given away.

DW.1 further told court that she saw Exh.P1 which comprised what had been seized and that she is the one who received them.

She also told court that exhibit P5 which comprised the release orders is the one she used to release the goods. These release orders ran from Exhibit P5a-5r.

She relied on those exhibits to prove her case.

It is the same exhibits the Plaintiff relies upon to prove that not all the seized goods were released.

Exhibit P2 was a document written by the Defendant but endorsed by all parties.

It listed the goods seized and their values.

As stated by the DW1 some of the packages had burst open.

To determine how much was available, such goods were released by weight. Each box weighed 25 kilograms. So by taking their weights, it was possible to determine the number of boxes.

PW1 told court that because of the destruction of the packaging, the parties held a meeting and present were counsel for Plaintiff Mr. Brian Kabayiza, counsel for the Defendant Ms. Christa Namutebi and Julius Nkwasure.

That in the meeting they agreed as follows;

1. To use the record in Exhibit P2 which indicated goods and their prices.
2. Where reference in the release of goods record referred to cartons, it would also mean boxes.
3. Whereas twines is expressed in weight or kilogram, the number of kilogram shall be translated by known weight per box to derive the number of boxes of twines in the mentioned kilograms.

Going by this method, the Plaintiff came up with what had not been returned. This is 5h of her plaint. The paragraph shows Twines seized, received and not received. The same is repeated on Fishnets. This was applied to both the goods seized at Busitema and Nakawa stores.

At the end of it all the Plaintiff claimed 181 bales not released valued at US\$ 15,447.9 and cartons seized and not released 1624 cartons valued at USD 33,455.5.

It is PW1's evidence that the parties held a meeting in which they reconciled goods received as against goods released. The reconciliation showed that out of the total twines 8119 received 6925 were released leaving 1,193 boxes unaccounted for. Each box contains 50 pieces of twine.

Furthermore out of 1009 bales fishnets seized the Defendant released 828 leaving 181 bales unaccounted for.

This evidence of the Plaintiff was not dislodged by way of cross-examination.

The Defendant relied on the release orders to buttress their case, but it is these very release orders which indicated the shortage. Furthermore DW1 in her testimony stated that some of the goods were damaged or given away. In my view this only shows that the goods that were seized were not all released to the Plaintiff.

DW1 admitted that she was not upto the job and could have failed to properly supervise the release. In paragraph 3.4 she stated;

“The process of releasing the nets/cargo to the Plaintiff was hectic, tedious and involved a lot of supervision due to the following:

- (a) The Plaintiff would bring (3) trucks to be loaded at the same time.*
- (b) The Plaintiff would come in with hired labourers who he paid to load. These were approximately 15 in number and we were only two URA staff supervising the release, of which I personally dealt with the release alone as the other staff handled other duties in the warehouse. These labourers were rowdy and moving all over the warehouse as they were packing the scattered twine in the sacks that were brought in by the Plaintiff.*
- (c) The customs warehouse had other cargo belonging to other tax payers, deposited with us pending customs clearance. I had to take note of that cargo’s safety as I was supervising the loading while recording the releases, which made it cumbersome.”*

From the pieces of evidence is seen DW1 saying that there was underdeployment which made it difficult for her to efficiently handle the release. The words “*scattered twine*” means it was a store in disorder and therefore accountability of what was there difficult to achieve. What however is clear from her activity in the warehouse, is that she weighed the items before they were taken. It is this weight as agreed between the parties that was used to determine what had been released.

The Plaintiff having raised the issue of under release and supported it with the release orders made by the Defendants themselves, the duty to dispel that evidence now fell upon the Defendant.

It is trite that the burden of proof lies on the person who asserts the truth of the issue in dispute. It is also in the same vein an accepted position that where that person adduces evidence sufficient to raise a presumption that what he asserts is true, the burden shifts and unless the other party, in this case, the Defendant adduces evidence to rebut the presumption, it will be presumed to be true.

In the instant case the Plaintiff's evidence that 1,193 boxes/cartons containing 50 pieces each of twine and 181 bales of Fishnet were not returned remains unrebutted by supporting documents. The Court believes that to be the position and holding that to be the position orders that the Defendant releases the goods to the Plaintiff or pays the value thereof at the prices provided in Exhibit P2, a document that was endorsed by both parties.

If the Defendants opt to pay the value of the goods, they will also pay interest of 18% p.a from date of the consent judgment 16th July 2013 Exhibit P4. This interest is because the Defendant has kept the Plaintiff out of her money a position clearly observed by Lord Denning in *Harbutt's Plasticine Ltd v. Wayne Tank & Pump Co. Ltd [1970] QB 447* in these words;

“An award of interest is discretionary. It seems to me that the basis of an award of interest is that Defendant has kept the Plaintiff out of his money, and the Defendant has had use of it himself. So he ought to compensate the Plaintiff accordingly.”

In the instant case the Defendant acting contrary to what they had agreed, retained a good portion of the Plaintiff's trade goods thus depriving her of the use of proceeds thereof.

The Plaintiff has also claimed General damages.

The ordinary remedy for breach of contract is damages. These damages are intended to put the Plaintiff in the same or as near the same financial position as he would have been had the Defendant carried out her side of the bargain. *J.K. Peter v. Spear Motors Ltd SCCA 4/1991*.

General damages are guided mainly inter alia by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach.

These as observed by Court in *Katakanya & Others vs. Raphael Bikongoro HCCA No. 12 of 2010* in the words;

“General damages need not be specifically pleaded, particularised or proved” because the law presumes them to be the direct natural or probable consequences of the act or omission complained of.”

In the instant case the goods retained were worth a lot of money and the money was locked up in the goods retained which caused economic inconvenience to the Plaintiff. This situation certainly calls for compensation.

General damages are a discretion of the Court which must however be exercised judiciously.
Southern Engineering Company vs. Mutia [1985] KLR 730.

Having considered all the circumstances of this case I find an award of 20,000,000/= appropriate and it is so awarded.

The Plaintiff also prayed for exemplary Damages. These form of damages may be awarded where there has been oppressive, arbitrary, or unconstitutional behaviour. Where the Defendant's conduct was calculated by him to make a profit which may well exceed the compensation payable to the Plaintiff, or where some law for the time being in force authorises the award of exemplary damages; ***Rookes vs. Barnard [1964] ALLER 367.***

In the instant case there is a breach of consent judgment, but no intention has been established. DW1 told Court the circumstances under which the goods were kept and released. She said she was alone. The packages had burst open and goods had been scattered all over which could have led to loss. There is nothing to show acts of impunity or oppression. In the absence of such acts, Exemplary damages are denied.

The Plaintiff is also awarded costs of the suit.

The sum total is that judgment is entered in favour of the Plaintiff against the Defendant in the following terms;

- a) The Defendants release the remaining goods namely 181 bales of Fishnet bales, 1,624 cartons of Twines or their value.
- b) Interest on (a) at 18% from 16th July 2013 till payment in full.
- c) UGX 20 million as General damages.
- d) Interest on (c) at 6% p.a from date of judgment till payment in full.
- e) Costs.

Dated at Kampala this 15th day of May 2018

HON. JUSTICE DAVID WANGUTUSI

JUDGE