

**THE REPUBLIC OF UGANDA**

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

**[COMMERCIAL DIVISION]**

**CIVIL SUIT No. 605 OF 2014**

**WEN JIE ::: PLAINTIFF**

10 **VERSUS**

**1. NABIMANYA ISAAC**

**2. BREGAH INTERNATIONAL LIMITED ::::::::::::::::::::::::::::::: DEFEDANT**

*CONSOLIDATED WITH*

15 **C.S No. 21 OF 2016**

**AMARACHI GENERAL COMMERCE ::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

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**WEN JIE ::: DEFENDANT**

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

**JUDGEMENT**

This judgment arises from two consolidated suits. The plaintiff in the Civil Suit No. 21 of  
25 2016 (Amarachi) instituted a suit on 11<sup>th</sup> January 2016 against the plaintiff in Civil Suit No.  
605 of 2016 (Wen Jie) claiming 2 cartons of gear lever spare parts of Honda CG 125] under  
the Trade Mark of OSCALLY contained in the container No. PCIU I47990/0 held at Jinja  
Road Police Station.

It was Amarachi’s case that in the month of June 2015, the company through its Managing  
30 Director Udeh Osondo Callistus purchased 64 cartons of spare parts from China which were  
specially packed and registered under the Amalachi’s local locally registered Trade Mark  
called OSCALLY. That since Wen Jie’s consignment of goods could not fill a container;  
Wen Jie agreed to combine Amarachi’s goods with his in order to fill up the container which  
Wen Jie shipped. Amarachi prayed for;

1. A declaration that they are the rightful legal owners of the portion of goods [65 cartons of gear lever spare parts of Honda CG 125] under the Trade Mark 'OSCALLY'.
2. A declaration that Wen Jie and his agents are illegally passing off the Amarachi goods under the trade mark of Oscally as theirs whereas not;
3. Recovery of goods packed at police which are in danger of being unlawfully converted by the Wen Jie and his agents,
4. An order directing the police to open the container and inspect the goods jointly to authenticate each party's claim to the said goods in the container, general damages, interest and costs of the suit.

In his WSD, Wen Jie contested that he was not holding out or passing off the goods as they remain at Jinja road Police post to stop them from being released in the hands of Bregah International and Isaac Nabimanya.

Wen Jie had earlier on 29<sup>th</sup> September 2015 instituted a suit against Isaac Nabimanya (Nabimanya) and Bregah International Ltd (Bregah) in the Civil Suit No. 605 of 2015 jointly and severally seeking among others recovery of goods.

The facts leading to the claim according to Wen Jie's plaint was that Wen Jie in June 2015 contacted Isaac Nabimanya to ship a consignment of motor cycle spare parts which he ordered from 3s Industrial Co. Ltd China. That as payment for the services, Wen Jie would offset monies owed to him by Nabimanya from another transaction. That upon the goods reaching Uganda, Bregah attempted to claim the ownership of the goods and convert them for their own use. The action prompted Wen Jie to report the matter to police which impounded the container.

The defendant's on the other hand state in their WSD that the 2<sup>nd</sup> defendant, Bregah a Company in which the 1<sup>st</sup> defendant (Nabimanya) is a Director contracted Wen Jie to ship the consignment of goods in the name of Bregah. Upon the goods reaching Mombasa, Bregah contacted Union Logistics (U) Ltd and Allways Shipping Services to transport the consignment to Malaba and then to Kampala at its own costs and engaged Overseas Clearing & Forwarding Company to clear the goods at Malaba. That Bregah paid the clearing services as well.

That upon clearance, the consignment was then warehoused at Nakawa at a URA registered warehouse (Maina) whereupon the Bregah paid URA taxes totaling to UGX 31,484,106/=.

That upon the goods reaching Uganda, Wen Jie lodged a complaint with Police and the goods were impounded by the police on Wen Jie's complaint.

At scheduling, the following issues were framed for determination;

1. Who of the parties in the consolidated suit is entitled to the goods in dispute.
- 5 2. What are the remedies available to the parties.

### **Judgment**

I have read the pleadings of the parties, the agreed facts, the documents and the written submissions of Counsel.

**Issue one;      *Who of the parties in the consolidated suit is entitled to the goods in***  
10                    ***dispute?***

It is evident that the goods are currently at Jinja road Police post and there are three parties with a claim to the goods. I propose to handle each issues as framed.

### **The case for Amarachi.**

It was Amarachi's case as contained in the plaint that in the month of June 2015, the company  
15 through its Managing Director Udeh Osondo Callistus purchased 64 cartons of spare parts from China which were specially parked and registered under the Amalachi's local registered Trade Mark called OSCALLY. That since Wen Jie's goods could not fill a container; Wen Jie agreed to combine Amarachi's goods with his in order to fill up the container.

From the pleadings of Amarachi, it is apparent that Amarachi does not in any way show how  
20 the 65 cartons belong to them. All they did was to plead in the plaint that the goods belong to them and at the trial did not lead any evidence to prove that claim.

When Meng Xiangyu (PW1) wrote to the Uganda Police to clarify on the ownership of the goods, he did not state anywhere that part of the goods belonged to Amarachi. There is no evidence at all to show that Pw1 communicated to Wen Jie that part of the goods belonged to  
25 Amarachi.

When Pw1 was asked whether he had invoiced Amarachi, whether he had a copy of the bill of lading for the claimed 65 cartons, whether there was any proof of payment for the 65 cartons, he answered in affirmative. However, there is no documentary evidence on record. There is no invoice, no bill of lading and no proof of payment.

I find it irregular for goods that are claimed to be in the same container to have multiple bills of lading but with no clarification on where the carrier was supposed to deliver the contents in the container. There ought to at least be instruction on how the contents of the container were supposed to be delivered. Was it a single time delivery or was the carrier supposed to  
5 open the container and deliver the goods separately to each owner.

There is no evidence of Amarachi placing an order for the goods, there is no invoice that was tendered in evidence to prove that the seller received consideration from Amarachi as consideration for the 65 cartons. In any event Counsel for the plaintiff in Civil Suit No. 21  
10 of 2016 chose not to prosecute the case. He called no witnesses and all together abandoned the proceedings of the consolidated suit with no explanation whatsoever.

I am inclined to agree with counsel for the defendant's submission that; Section 8 of the Trade Marks Act, 2010 which provides that a Trademark is to be for particular goods or services, would mean that the Oscally trade mark was particularly registered only for the  
15 goods in class 16 which is in respect of stationary and not motor cycle spare parts which are the goods in dispute. I accordingly find that Amarachi has failed to prove ownership of the goods.

In the circumstances C.S No. 21 of 2016 is dismissed with costs.

#### **Wen Jie's case;**

20 It was Wen Jie's case that the totality of the evidence before this court leads to the conclusion that he is the owner of the goods in dispute.

Counsel for Wen Jie submitted that Wen Jie ordered for goods from 3s Industrial Co. Ltd in China. To prove this, Wen Jie tendered in evidence a copy of the order [Which was marked as PE1] and evidence of partial payment for the goods.

25 Counsel further submitted that this position is confirmed by the testimony of Meng Xiangyu (PW1), a Director of 3s Industrial Co. who testified that he indeed received the order for the goods from Wen Jie and acted on it. He tendered in evidence a copy of the confirmation of the order for the goods which was marked as PE2.

In his submission this Counsel for defendants noted that the plaintiff's name does not appear  
30 anywhere on the alleged order form nor is there any instruction that the goods be shipped in the name of the plaintiff as consignee.

On close scrutiny of the said order form, i note that it is a mere list of items, there is neither mention of the buyer nor the seller or even any instruction in whose names the goods should be shipped.

Counsel for Wen Jie further submitted that Wen Jie contracted Nabimanya Isaac to ship the  
5 container on his behalf. To substantiate this, Counsel relied on a string of WhatsApp messages between Isaac Nabimanya and Wen Jie [marked PE 13].

Counsel invited court to review the string of the WhatsApp messages between the parties and come to a conclusion that it was Isaac Nabimanya who advised Wen Jie to ship the consignment in the 2<sup>nd</sup> defendant's (Bregah) name. Counsel for Bregah International tried to  
10 dispute the admissibility of the WhatsApp messages. However, Section 8 of the Electronic Transaction Act provides for the admissibility of the electronic or data messages and in my view PE 13 was properly admitted in evidence.

I have critically read the WhatsApp messages. Firstly, it is noteworthy that the messages between Isaac Nabimanya and Wen Jie do not explicitly show the genesis of the relationship  
15 between the two and Bregah. Counsel for Wen Jie invited court to come to a conclusion that it is in fact Isaac Nabimanya who was contracted to ship the container containing the goods in dispute. In order to understand the relationship between Wen Jie and Isaac Nabimanya, it is important to read all the messages.

The initial messages show that Wen Jie and Isaac Nabimanya were discussing how to evade  
20 taxes. For example on June 26<sup>th</sup> 2015 Wen Jie texted; *"Isaac, Money is spent, but why are they still delaying us?"*

Isaac replied, *"the lady just called to go to her office tomorrow, so let's meet tmrw."*

Wen Jie asked, *"so is it finished or not yet?"* Isaac replied and stated, *"one person is remaining, he is fearing for his job."*

25 Wen Jie asked, *"then how do we handle it,"* to which Isaac replied. *"No, he's going to work, we talked enough, so be patient unless you want them to follow you up, which I don't want."*

Later on July 3<sup>rd</sup> 2015 Nabimanya Isaac texted Wen Jie, *"from what I have been told, just pay for the container, the issue has gone to another level, there's no way the tax can be dodged. So just pay, we shall be able to help on the next containers."*

This shows that whatever agreement it was between Wen Jie and Isaac, it was to devise ways of illegally reducing the tax liability of Wen Jie on that particular container. This was corroborated by the text messages between Wen Jie and a one Myles (PE 3), where Wen Jie texted, *“nothing can be done to dodge the tax now, only pay.”*

5 It appears that when the scheme to evade the tax failed, Wen Jie wanted the people that had been paid to make a refund such that he just tops up and pays the taxes. But Isaac appears to have been out of the country. Myles texted him, *“Isaac is supposed to talk to them coz he knows how much he gave each. We really have to wait.”*

All this shows that the underlying agreement between Wen Jie and Isaac Nabimanya was one of evading tax liability. Wen Jie’s Counsel invited court to read through the messages and find that Isaac Nabimanya was contracted to ship the container. With due respect to Counsel I don’t see how court can do that. This would in my view amount to a tacit approval of what was going on which court cannot do.

Counsel for Wen Jie further argued that the agreement between Wen Jie and Nabimanya Isaac was premised on a debt of UGX 47,000,000/= owed by Nabimanya Isaac to Wen Jie.

According to Wen Jie, he gave money to Isaac Nabimanya in 2 installments, the first being UGX 35,000,000 which was given to a one Kisitu Stephen and the second being UGX 12,000,000/= which was given to Myres Arinaitwe.

DW2, Myres Arinaitwe in fact testified that Wen Jie gave him the money i.e UGX 12,000,000/= to clear the initial container.

Wen Jie testified that Stephen Kisitu and Isaac Nabimanya intimated to him that it would be easier to import and clear the consignment in issue if the same was shipped in the names of the 2<sup>nd</sup> defendant company (Bregah). He relied on PE13, a text message between Wen Jie and a one Steven Kisitu. I note that it is in this text message that the use of the 2<sup>nd</sup> defendant as consignee was hinted on. In his testimony Wen Jie stated that he had discussed the use of the 2<sup>nd</sup> defendant as consignee with the 1<sup>st</sup> defendant and Stephen Kisitu.

PE 13 is a conversation between Kisitu and Wen Jie and not a conversation between Wen Jie and Isaac. Further, this was a conversation that took place on 15<sup>th</sup> June 2017. The date of the bill of lading is 11<sup>th</sup> June 2015. It’s notable that the bill of lading bears the name of the 2<sup>nd</sup> defendant as the consignee. Wen Jie cannot therefore say that they requested him to use Bregah as a consignee at a date later than when the goods were loaded for shipment.

PW1, Mr. Meng Xiangyu in his testimony noted that when the goods were ready for shipping, Wen Jie instructed him to ship the same through the 2<sup>nd</sup> defendant's company name as the consignee.

Further the messages were sent on 15<sup>th</sup> June 2015, 5 days later than when the goods were  
5 shipped according to the bill of lading. In my view the date of communicating the name of the consignee cannot be later than the date that appears on the bill of lading which named the 2<sup>nd</sup> defendant as the consignee.

From the evidence before me I note that Isaac Nabimanya is the only shareholder and Director of Bregah International. Kisitu is not a Director of the company and there is no evidence to  
10 show that he is an employee or an agent of the said company. Therefore he can't be said to have any authority to agree that the defendant company be used as a consignee.

In addition Kisitu who allegedly instructed Wen Jie to ship the goods in the name of Bregah International was not called as a witness to confirm receipt of the UGX 35,000,000/= allegedly received on behalf of Bregah.

15 In my view the plaintiff has not proved to courts satisfaction the circumstances why Bregah other than himself was the preferred consignee.

Wen Jie and DW1 in their witness statements stated that the goods were marked with the plaintiff's trademark SHANYAN. However from the record (EXH. PE 11) the Trade Mark was registered on the 11<sup>th</sup> day of January, 2016 in class 12 under No. 54549.

20 As Counsel for the defendant submitted, the goods were shipped on 11<sup>th</sup> day of June, 2015 and Wen Jie filed this suit on 16<sup>th</sup> September 2015 all which pre-date the registration of the Trademark. In my view this piece of evidence adds little weight to the plaintiff's case.

### **The case for Bregah International**

DW1 Isaac Nabimanya and DW2 Mayers Arinaitwe testified that the company through  
25 Isaac Nabimanya contacted Wen Jie to ship a consignment in the names of the company. That Wen Jie shipped the consignment CIF Mombasa and the shipper was Happy Rise International/ 3S industrial Co. Ltd.

That upon clearance at Mombasa, Bregah contracted Union Logistics (U) Ltd and All Ways Shipping Services to transport the consignment to Malaba at its own cost. Overseas Clearing  
30 & Forwarding Company was contacted to clear the goods at Malaba. DE 4 is a copy

acknowledging receipt of a sum of USD 5300 being transport costs for the goods issued by All Ways Shipping Services.

That upon clearance, the consignment was then warehoused at Nakawa at a URA registered warehouse (MAINA), whereupon Bregah paid URA taxes totaling UGX 31,484,106/= A  
5 copy of the invoice dated 5th June 2015; (DE7) a copy of the packing list (DE 8) and the URA Clearing Agent acceptance of appointment status (Twinco Forwarders (U) Ltd) to clear the consignment at Nakawa (DE 9), copies of the initial URA assessment (DE 13) and payment receipt (DE 14) were all tendered in evidence.

From the evidence on record it is claimed the 2<sup>nd</sup> defendant borrowed money from the 1<sup>st</sup>  
10 defendant Isaac Nabimanya in the sum of USD 10,000 which monies were given to the plaintiff. In support of this the defendants tendered in DE26, a bank statement of the 1<sup>st</sup> defendant that showed that on the 24<sup>th</sup> June 2015 and 27<sup>th</sup> June 2015, the sum of UGX 34 million being equivalent to USD 10,000 was withdrawn in cash. That USD 8,000 was for the goods whereas USD 2,000 was for the shipping. In my view since the transaction in the  
15 bank was in cash it is difficult to appreciate the nexus between the cash withdraw and the payments to URA which requires independent evidence which the defendant has not adduced.

The defendant further relied on DE 25, a resolution of the 2<sup>nd</sup> defendant authorizing the 2<sup>nd</sup> defendant to borrow USD 10,000 from the 1<sup>st</sup> defendant.

20 Counsel for Wen Jie in his submissions stated, quiet rightly in my view, that while the resolution purports to state that it was made during Bregah's meeting on 15<sup>th</sup> June 2015, the same was in fact registered with the Registrar of Companies on the 7<sup>th</sup> of June 2016, a year later according to the registrar's stamp endorsed on the document. That the resolution was filled after the suit was filed in court and shortly after scheduling.

25 In reply Counsel for the defendants submitted that a company resolution contains a date on which that particular resolution was made. That registration of that particular resolution is merely for evidential purposes that indeed a resolution was made on a particular date. Further there is no bar in law and or no specific timelines in law in which a resolution must be registered.

30 I will agree with Counsel for the plaintiff as it appears the resolution was made principally to shore up the defendant's case and will attach no evidential value to the resolution.



It is stated that it's the 2<sup>nd</sup> defendant who was sent an invoice by Happy Rise international Ltd/ 3s Industrial Co. Ltd [DE7] which shows the number of cartons were 1016 at a total cost of USD 8,035.7. It is also these cartons that are referred to in the bill of lading (DE 2).

5 While Wen Jie showed that the supplier sent him a perfoma invoice, the evidence adduced by Bregah shows that it was Bregah that was finally invoiced. When I compare the perfoma invoice tendered in evidence by Wen Jie with the invoice tendered in evidence by the defendants, there is a huge variance. There are goods that are on the perfoma invoice that are not on the invoice that was sent to the defendants. It is clear that the goods were different.

10 PW1 stated in his evidence that he sent to Wen Jie a proforma invoice for goods that were availbale and some that were to be manufactured. Upon Wen Jie confirmation, PW1 shipped the goods. This would mean that the goods that were on the perfoma invoice would be the same goods that were on the invoice.

15 I further note that, the invoice and the packaging list tendered in evidence by Bregah bear the same weight and measurements that are on the bill of lading. However, the packaging list that Wen Jie tendered in evidence does not even bear measurements or the weight of the container. It is hard to ascertain whether the goods on the packaging list are the same goods reflected on the bill of lading.

20 Further, the packaging list [PE11] that Wen Jie tendered in evidence does not have any address of the person who sent it neither to whom it was sent. It does not even bear any date. As a matter of fact, if Wen Jie had not indicated on the trial bundle that it is a packaging list, it would have been difficult for anyone to ascertain what it is.

25 On the other hand, the defendants tendered in evidence the packaging lists which bears the same measurements and weight as reflected on the bill of lading. This shows that it was the 2<sup>nd</sup> defendant (Bregah) who was actually invoiced and given a packaging list. The defendants packaging list contains the date on which it was made, which is shortly before the shipment date.

The bill of lading bears the name of the 2<sup>nd</sup> defendant (Bregah) as the consignee of the goods.

30 Section 1 (e) of the Sale of Goods Act, Cap 82, provides that document of title to the goods includes any bill of lading.

Its trite law that a "document of title" is a document that enables the holder (the person who "possesses" it) to deal with the goods described in it as if he was the owner. Usually, once goods are fully paid, the consignee is entitled to the goods.

In the case of ***Equinox Global Trading Vs Panaphina HCCS No. 570 of 1999***. Court held  
5 that;

*“the Bill of Lading is a document acknowledging the shipment of the consignor’s goods for carriage by sea. It operates as a receipt for the goods; it summarises the terms of the contract of carriage and act as a document of title for the goods.”*  
**(emphasis added)**

10 In the case of ***Fred Kamanda Vs Uganda Commercial Bank SCCA 17 of 1995***, court held that;

*“if a person has document of title to the goods, such a person is deemed to have the right to immediate possession.”*

Counsel for Wen Jie’s submitted that as soon as goods are cleared upon transportation by  
15 sea, the bill of lading ceases to have effect and the linkage to the consignee equally ceases, that there is then need to look at other aspects of ownership relating to the goods. Counsel relied on the case of ***Kisembo Peter & Anor Vs Commissioner Customs Uganda Revenue Authority HCCS No. 269 of 2012***.

I am of the opinion that the ***Peter Kisembo*** case (supra) is distinguishable from the present  
20 case. In that case, the plaintiffs imported vehicles from United Kingdom through port of Mombasa. Since they did not have a Tin Number, they used a one Mutesasira Ali as the consignee of the goods. When the vehicles reached Uganda, URA (defendant) seized them and held them in lien on the ground that Mr. Mutesasira Ali owed unpaid taxes in respect of two other vehicles earlier imported by him. In that case, it was clear that Mr. Ali was a  
25 nominal consignee. He had passed the bill of lading to the true owners and had testified both in court and to the defendant that he indeed was not the owner of the goods.

Court found that the bill of lading ceases operation when the goods are delivered. Further that, a bill of lading ceases to be a document of title to the goods upon the holder taking delivery of goods at which point the bill of lading is discharged. Court therefore held that

once the goods were delivered to the true owners who even transported the goods all the way from Mombasa the bill of lading was discharged.

Court further held that to insist that Mutesasira Ali is the true owner of the goods some months after he transferred the bill of lading to the owners robs the bill of lading of its character as a negotiable instrument and as a document of title.

In the present case, Bregah was the named consignee. Wen Jie intercepted the goods before they reached the defendant (Bregah) and they were taken to Jinja road Police Post where they are currently. There is no proof that the goods were delivered to the consignee so as to extinguish the effect of the bill of lading and neither did they surrender the bill of lading to Wen Jie as was in the case of *Kisembo* (supra).

The bill of lading indicates the 2<sup>nd</sup> defendant (Bregah) as the consignee and thus the title to the goods and the right to immediate possession lies with Bregah. There is no single mention of Wen Jie on the bill of lading and thus title to the goods cannot be said to lie in him and neither does he have any right to immediate possession.

Further it is on record that the Bregah contracted Union Logistics (U) Ltd and All Ways Shipping Services to transport the consignment to Malaba at its own cost and also contracted Overseas Clearing & Forwarding Company to clear the goods at Malaba. There is a copy of the acknowledgment of receipt of a sum of USD 5300 issued by All Ways Shipping Services dated 14<sup>th</sup> August 2015 [DE4].

It is also on record that URA issued an assessment notice of UGX 10,995,899.00/= on 15<sup>th</sup> August [DE 11] to Bregah. Bregah paid the said taxes on the 17<sup>th</sup> August 2015 and also cleared the warehouse fees.

I have considered the evidence adduced by both parties. There is evidence that Bregah was actually invoiced by the seller, there is evidence that Bregah was the consignee on the bill of lading and thus had title to the goods. There is evidence that Bregah paid the transporters of the goods from Mombasa to Malaba and at Malaba. There is evidence that Bregah paid all the taxes.

It is therefore my holding that it is the 2<sup>nd</sup> defendant who holds title to the goods at this stage and is accordingly entitled to the goods in dispute.

Consequently since the plaintiff has failed to prove his case, it is dismissed with costs.

### **Judgment on the counter claim**

Bregah filed a counter claim against Wen Jie wherein the counter claimant stated that it has suffered loss due to actions of the counter defendant. The 2<sup>nd</sup> defendant's counter claimant claim is in conversion. Counsel for the counter claimant submitted that at all material times, the counter claimant was in ownership of the goods until the goods were intercepted by the counter defendant when he involved police and the goods are being detained at Jinja road Police.

The tort of conversion is committed by an unlawful interference with the plaintiff's title in the goods. Counsel for the counter claimant relied on the case of *Freku enterprises Vs Attorney General [1991] HCB 68* where the NRM soldiers during the period of takeover in 1986 took goods from the plaintiff's shop. Court held that there was conversion of goods.

The tort of conversion compensates for loss of the right to possession of the chattel. Accordingly the plaintiff must show a right to immediate possession and that the defendant's act was a denial. The tort may be committed in diverse factual circumstances. It does not however generally require a positive act by the defendant' as opposed to mere non-feasance.

In the instant case, the counter claimant had title in the goods by virtue of the fact that the company was the consignee on the bill of lading and as already held, the counter claimant, being the named consignee is the prima facie owner of the goods. The counter claimant/defendant had a right to immediate possession of the goods. The counter defendant intercepted the goods by involving police and to date, the goods are still being held at Jinja road Police Post. There is an evident interference by the counter defendant to the immediate possession of the goods by the counter claimant. Under the circumstances, I find that there was conversion of the counter claimant's goods by the counter defendant.

### **25 Remedies**

The 2<sup>nd</sup> defendant sought that the suit be dismissed with costs it was.

On the counter claim, the 2<sup>nd</sup> defendant prayed for;

#### **a. A declaration that the 2<sup>nd</sup> defendant is the rightful owner;**

I have already found that the goods belong to the 2<sup>nd</sup> defendant. Accordingly it is ordered that the 2<sup>nd</sup> defendant is the rightful owner of the goods in issue.

**b. For payment of special damages**

The principle governing the award of special damages is well settled. A claim for special damages must specifically be pleaded and strictly proved.

As special damages the counter claimant/defendant claimed demurrage costs paid to Haulage Contractors Ltd, costs paid for crane services rendered by the same company, legal fees paid by the 2<sup>nd</sup> defendant for the criminal matter against its Director the 1<sup>st</sup> defendant and costs each day the container/consignment remains parked at Jinja Road Police. Further the 2<sup>nd</sup> defendant claimed lost revenue from prospective buyers of the consignment. While at scheduling certain receipts and proforma invoice and LPOs were admitted in evidence, the 2<sup>nd</sup> defendant did not lead any evidence during the trial through the two witnesses who testified on behalf of the defence and who filed witness statements to put a narrative to the receipts etc which had been placed on record the documents remained hanging. In my view the 2<sup>nd</sup> defendant failed to strictly prove the special damages and they are accordingly disallowed.

The above said, it is now a settled position of the law that in event a claim for special damages is not proved to the satisfaction of court, it can be met with an award for general damages (see *Kibimba Rice Co Ltd Vs Uwar Selin SCCA No. 7 of 1988* (unreported)). In this regard the counter claimant/defendant would recover the value of the goods but since as earlier held the goods will be surrendered to the defendant then this will not arise.

However since the goods have been in police custody for a considerable of time, I believe an award of general damages of UGX 20,000,000/= would in the circumstances of this case be sufficient recompense for the loss of earnings had the counter claimant/defendant sold the goods immediately they were cleared through customs.

The general damages awarded will attract interest at court rate from date of judgment till payment in full.

The counter claimant/ defendant will also get costs of the counter claim.

**B. Kainamura**

**Judge**

30 **24.04.2018**