



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

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CIVIL SUIT NO. 834/2014

ESOM INTERNATIONAL TOURS (U) LTD.....PLAINTIFF

VERSUS

NAGOYA CO. LTD T/A

NAGOYA CUSTOMS BONDED WAREHOUSE.....DEFENDANT

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BEFORE HON. MR. JUSTICE RICHARD WEJULI WABWIRE

JUDGEMENT

The Plaintiff's claim against the Defendants is for an order of compensation, special damages of Ushs. 183,938,886/,
15 general damages for breach of a duty of care, interest and costs of the suit.

In their Joint Scheduling Memorandum the following facts were agreed to as undisputed;

1. The Plaintiff is a company duly incorporated in Uganda
20 and whose first objective is running and managing the

business of tourism, tour operators and managers, travel and travel agencies.

2. That on the 29th day of September 2012, the Plaintiff deposited his motor vehicle, Jeep Cherokee Engine No. JJ468384X152701 in the custody of the Defendant's bonded warehouse Bond Number BW0040 located at Plots 882, 891, Kireka Kampala.

3. That custody of the motor vehicle in the Defendant's bond attracted demurrage of 4,000/ per day.

4. That the Plaintiff made a complaint to Uganda Revenue Authority (URA) intimating that his vehicle had been affected by a flood.

Various witnesses filed witness statements upon which they were cross-examined. Court was addressed in written submissions.

The parties agreed to the following issues:

1. Whether the Plaintiff's vehicle was damaged by floods while in custody of the Defendant's bonded warehouse.

2. Whether the Defendant has or had the obligation to make good the damages occasioned onto the Plaintiff's car.

3. What remedies are available to the parties.

M/s Wagabaza & Co. Advocates represented the Plaintiff while M/s Kabega, Bogezi & Bukenya Advocates, represented the Defendant.

45 I have carefully considered the pleadings, evidence on record
and the written submissions of Counsels.

**Issue one: Whether the Plaintiff's vehicle was damaged by
floods while in custody of the Defendant's bonded
warehouse.**

50 The Plaintiff's Counsel submitted that they kept their car with
the Defendant after it was imported from the UK. That upon
delivery to the Defendant's premises, the vehicle was inspected
and found to be in good shape.

That in 2003, when the Plaintiff went to the Defendant's
55 premises, he found the said vehicle in the following condition;

- a) all the doors, roof and windows open,
- b) the interior was wet, brown rust marks had covered the
chrome and Electrics,
- c) all interior dials were covered in dust and receding line
60 up to the roof lining of the car,
- d) the engine bay was completely covered in Brown Dust,
sludge and water marks.

That the URA through its commissioner customs directed the
Defendant company to take the car to Spear motors for
65 diagnosis. The diagnosis report showed that the car had been
damaged by water due to flooding. That the Defendant's
operation licence was suspended as a result. The Plaintiff's

witness stated that he lodged a complaint with Mr. Henry Nkeera who apologized and told him that the bond had flooded and the wall was knocked down which hit vehicles including the one of the Plaintiff.

In reply the Defendant's Counsel submitted that it is not in dispute that the Plaintiff's car was bonded in the Defendant's warehouse upon its importation from United Kingdom to Uganda. That the vehicle was an already used car 2001 model as at the time of its importation in 2013. That the Plaintiff's vehicle fell victim of floods that broke the Defendant's fence open, leading to water entering and damaging the car, but that however, the Defendant denies vandalization of the same. That Issue No.1 ought to be resolved in favour of the Plaintiff, only to the extent that floods caused damage to the car, but that the defendants deny vandalisation.

PEX1, which is the Bill of Lading, shows that the Plaintiff lawfully and rightly imported a motor vehicle in the make of Jeep Cherokee Engine Number VMZ3F0184 Chassis No. JJ4GB84X152701 on 18th December 2013.

In his statement, Mr. Abaho Anthony, a bond keeper in charge of managing cars at the Defendant business stated that he received the said vehicle in the Defendant's bond on 29th December 2012.

On the other hand, in his statement, Mr. Ssebukuse Pontiaus stated that the said vehicle was driven from Mombasa to the

Defendant's bonded warehouse on 31st December 2012. Nevertheless none of the parties disputes that the said vehicle
95 was deposited in the custody of the Defendant's customs bonded ware house.

During his cross examination, Mr. Henry Nkeera, the Defendant's Managing Director confirmed the Plaintiff's submissions, that the vehicle got flooded while at the premises
100 of the Defendant company. This was corroborated by the testimony of Mr. Abaho who stated that around May 2013 while the vehicle was in the Defendant's custody the bond flooded, leading to collapse of the wall and water then entered into the Plaintiff's motor vehicle. As rightly submitted by the
105 Plaintiff, the Defendant did not notify the Plaintiff about the unfortunate event but the Plaintiff got to know about it sometime in June 2013 when the Plaintiff's Managing Director visited the Defendant.

In his testimony Mr. Ssebukuse stated that after the flood he
110 was requested by the Defendant to do a thorough check up of the vehicle, which he did and established that the car had been soaked in water and that the electronic door system was supported by wood.

As noted in DEX5, on 15th September 2014 URA requested
115 the Defendant to permit release of the said vehicle for mechanical diagnosis at Spear Motors Ltd, to confirm whether it was indeed affected by the floods in the Defendant's bond

and that if its established as such, the Defendant would be responsible for its garage repair costs.

120 Upon the diagnosis as evidenced in DEX4 dated 22nd
September 2014, in a letter dated 23rd September 2014
(DEX6), URA wrote to the Defendant informing them that the
diagnosis confirmed that the vehicle was damaged and
affected by floods while in the Defendant's bond, revealing
125 service repair estimates amounting to Ugshs. 20,993,311/ and
were accordingly given a 4 day grace period to settle the repair
costs.

In a letter dated 29th September 2014 (DEX8), upon the
Defendant's failure to settle the repair costs, URA suspended
130 the Defendant's operations. He also confirmed that the
Defendant was suspended because of default in repairing the
suit vehicle. He stated that he Defendant's service instruction
to Spear Motors was to carry out diagnosis after the vehicle
had been exposed to water and to make a quotation first.

135 In my view, this means that the whole report by Spear Motors
was solely in respect of the effect of the floods on the suit
vehicle.

PW1 further stated that he did not get any other report that
contradicts the report from Spear Motors because URA
140 rejected his proposal of taking the vehicle to Ministry of Works
because Spear Motors could not justify which parts were
affected by floods or were general mechanical conditions as the

Defendant's Vehicle Inspection Report was only in respect of the exterior and interior not the mechanical condition.

145 Suffice to note that in DEX8, a letter addressed to the Defendant, URA made reference to the Defendant's letter where they consented that the module airbag control was affected by floods. In confirmation of that, during cross examination PW1 admitted that he has never paid for the
150 module air bag control which he had consented to have been affected in the Defendant's bond because the Plaintiffs wanted them to pay for the entire service estimate report yet it was objected to.

The only part of the service repair estimate that the Defendant
155 objected to were the wiper blades. In his testimony PW1 stated that the Defendant's vehicle inspection form ((DEX9) does not mention the condition of the wiper blades while in DEX10, he indicates that according to Spear Motor's inspection, the wiper blades were faulty.

160 Noteworthy, the original condition of the wiper blades was not known, there is therefore insufficient evidence to show that they were actually damaged by the floods.

During his cross examination, PW1 confirmed that the Defendant took responsibility of whatever happens to the
165 vehicle while it is in their bond. With the exception of the wiper blades therefore, the other content of the report from Spear Motors was conclusive about the condition of the suit

vehicle as a result of the floods at the Defendant's bond. If the Defendant sought to dispute this report they ought to have
170 subjected the suit vehicle to another inspection at Ministry of Works, as they had suggested, in which case Court have been able to compare the two reports and ascertain the damage caused by the floods. Since this was not done, Court can only rely on the report from Spear Motors.

175 In the event, I find that the Plaintiff's vehicle was damaged by floods while in the Defendant's custody.

Issue 2 : Whether the Defendant has or had the obligation to make good the damage occasioned to the Plaintiff's car?

180 Counsel for the Plaintiffs submitted that the Plaintiff agreed with the Defendant company to keep his car, pending clearance from URA. That it is not disputed by the Defendant that it was their duty to make good the damages but what is in dispute is the amount of damage in question.

185 That under paragraph 12 of DW1, Mr. Ssebukuse Pontiaus stated that the Defendant company's director gave options on how to solve the impasse including buying the car at the value it was bought, import a new similar vehicle or pay the invoice price and all other costs and invoices for clearing. That despite
190 the defendants disputing the figures as quantified by spear motors after diagnosis and repair, an analysis of the inspection filed by the Defendant company, when they

received the vehicle, showed the state of each part of the car and the remarks were positive.

195 That under paragraph 11 in his statement the Managing Director of the Defendant company stated that he was ready to take up liability only that he disagreed with the Director of the Plaintiff company on the value of the vehicle.

200 It has been established in Issue No. 1 that the Plaintiff's vehicle was damaged by floods while in the Defendant's custody and the Defendant has never made any payments in respect of its repairs.

205 Under **section 36 of the Contracts Act**, every party has a duty to perform its obligations under the contract and the duty covers both the implied and express terms of the contract. As noted in the facts of this suit, the Plaintiff kept their vehicle with the defendant for a demurrage fee while on their part, the defendants were under obligation to keep it safely.

210 No evidence was adduced that the Plaintiff ever at any time defaulted on their part of the bargain. However, evidence shows that the Defendants failed in their obligation of safely keeping the Plaintiff's vehicle.

215 The defendants breached their part of the bargain and in the event, they are obliged to make good the damage occasioned on the Plaintiff's vehicle.

Issue 3: What Remedies Are Available To The Parties

The Plaintiff prayed for general and special damages, interest and costs of the suit.

220 **General Damages**

The Plaintiff's counsel submitted that loss was suffered through loss of business when the company vehicle was damaged by the flooding at the Defendants' premises. That when this happened, they then lost out on business.

225 That since the Plaintiff is in the business of tourism and it is presumptive that the car should have been doing business throughout the time it stayed at the Defendant's Company, the Plaintiff suffered damages estimated at 200,000,000/=.

In reply the Defendant's Counsel submitted that the Plaintiff
230 in his evidence gave no pointer as to the amount of general damages that ought to be awarded by this Court. Nor was the projected sum of Ug.Shs. 200,000,000 pleaded. That there was no proof of what was spent on repairs carried out by a third party who repaired the car nor was such person called to
235 testify.

On the basis of the findings in Issues No. 1 & 2, that the Plaintiff's vehicle was damaged by floods at the Defendants' bond and that the Defendant were under obligation to make good the loss, it follows that the Plaintiff suffered damage as a

240 result of the floods at the Defendant's premises that damaged
their vehicle.

I do not agree with the Defendant's allegation that the Plaintiff
in his evidence gave no pointer as to the amount of general
damages that ought to be awarded by this Court, because as
245 clearly indicated in their submissions, the Defendants prayed
for a sum of Ug.Shs. 200,000,000 as general damages.

General damages are those losses which are presumed to be
the natural and probable consequence of the wrong
complained of. Proof and determination of the quantum of
250 which may be premised on the opinion and judgement of a
reasonable man, where the court cannot point out any
measure by which they are to be assessed.

According to **Halsbury's laws of England 4th Edition
Reissue Volume 12(1) and paragraph 812** thereof, General
255 damages are those losses which are presumed to be the
natural and probable consequence of the wrong complained of.
In the case of **Haji Asuman Mutekenga v Equator Growers
(u) Limited S.C.C.A no. 7 of 1995**. Justice Oder JSC, as he
then was, held that;

260 *“With regard to proof, general damages in a breach of contract
are what court (or jury) may award when the court cannot point
out any measure by which they are to be assessed, except the
opinion and judgement of a reasonable man.”*

It has further been reiterated in Assist (U) Ltd versus Italian
265 Asphalt and Haulage & Amt., HCCS No. 1291 of 1999 at 35
that; *'the consequences could be loss of profit, physical,
inconvenience, mental distress, pain and suffering'*

The compensation principle is known as restitution in
integrum and its rationale was discussed by the East African
270 Court of Appeal in **Dharamshi v Karsan [1974] 1 EA 41** in
which it was held that, general damages are awarded to fulfill
the common law remedy of restitution in integrum. This
means that the Plaintiff has to be restored as nearly as
possible to the position he/she would have been had the
275 injury complained of not occurred.

As observed by this honourable court in **Stanbic Bank
Uganda Limited -v- Haji Yahaya Sekalega (Civil Suit No.
185 of 2009)**, general damages are awarded within the
discretion of the court which is mandated to exercise its
280 discretion judicially taking into account factors such 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 or injury suffered. Further in the case of **Kamuntu
Anthony -v- Hajat Zam Sendagire & Attorney General (Civil
285 Suit No. 188 of 2019)**, this honourable court stated that the
general damages awarded in a claim should not better the
position of the Plaintiff but rather return him to the position

he would have been if he had not suffered the wrong complained of.

290 What the law mandates is that the claimant ought to be restored to the position that he would have been in, had the act causing the damage not been committed, in so far as this can be done by payment of money. See- **Haji Asuman Mutekenga case** (supra)

295 It is not contested that the Plaintiffs are involved in the business of tourism and tour operation and that the car in question had been imported for tourism business. This means that as a result of the flooding at the Defendant's bond, the vehicle could not serve its purpose, thereby occasioning the
300 Plaintiff loss of business for the period the car would have otherwise been in use. It has been established that the vehicle had been kept at the Defendant's bond from around May 2013 until around October 2014. This means that the Plaintiff lost close to one and a half years of business during which he
305 suffered loss of business.

The Plaintiff is accordingly entitled to general damages. I however find the sum of Ugshs. 200,000,000/ which the Plaintiff has asked for quite excessive in relation to the period spent out of business, I accordingly award the Plaintiff general
310 damages of Ugshs. 50,000,000/.

Special damages

The Plaintiff's Counsel submitted that particulars of special damages were clearly spelt out in the Plaint under paragraph 4 of the Plaint, with documentation as required by law for them to be proved and it amounted to Ugx. 175,854,886/ (One
315 Hundred Seventy Five Million, Eight Hundred Fifty Four Thousand Eight Hundred Eighty Six Shilling).

The principle of law is that special damages must be specifically pleaded and proved. see **Joseph Musoke -v-
320 Departed Asian Property Custodian Board and Another (Supreme Court Civil Appeal No. 1 of 1992)**; and **Sarah Watsemwa Goseltine and Another -v- Attorney General (Civil Suit No. 675 of 2006)** where the court explained that "special damages must be explicitly claimed on the pleadings,
325 and at the trial it must be proved by evidence that the loss was incurred and that it was the direct result of the Defendant's conduct ... "

Special damages can be proved by direct evidence; for example by evidence of a person who received or paid or testimonies of
330 experts conversant with the matters. See **Gapco (U) Ltd Vs A.S. Transporters (U) Ltd CACA No. 18/2004 and Haji Asuman Mutekanga Vs Equator Growers (U) Ltd, SCCA No.7/1995.**

The Plaintiff pleaded for Demurrage, surcharges and accruals
335 from date of entry into Nagoya Bond per verification form dated 29th/12/13 to 18th/12/2013 at the rate of Ugshs 4000

by 373 days at Ugshs 1,760,560/= and auction fees and surcharges plus agent' fee at Ugshs 1,300,000/=.

340 In reply the Defendant submitted that that prayer ought to fail as it is settled by law and practice that these sum are paid by the importer car owner and not by the owner of the bonded warehouse. That also the auction fees and surcharges are paid by the owner which indeed PWI admits to have paid for and on behalf of the owner as the Defendant is not in law duty bound
345 to pay this.

I am in agreement with the Defendant's Counsel that the Defendant is bound to pay the said fees and as such cannot plead them as special damages when in actual sense they were fulfilling their obligation which accrued before the damage to
350 the car.

The Plaintiff also pleaded for Damages as assessed by spear motors due to flood waters in the car and the quotation marked "Q" at 21,900,800/=. To which the Defendant replied that those damages though pleaded were not specifically
355 proved because no witness was called from Spear Motors, the authors of the assessment in issue to substantiate assessment and therefore ought to fail.

Noteworthy, the Spear Motors quotation was admitted in evidence by both parties. During cross examination of PW1,
360 the Defendant's Managing Director, stated that the Defendant's service instruction was to carry out diagnosis

after the vehicle being subjected to water and make a quotation first. The diagnosis conducted by Spear Motors having been a result of instructions from the Defendant, this
365 means that the report therefrom was an answer to the Defendant's request. In that respect, I find that the damages as assessed by Spear Motors due to the flood was duly pleaded and proved in the sum of **Ugshs. 20,993,311/** as evidenced in annexure Q to the Plaint.

370 The Plaintiff also pleaded the cost for the mechanical diagnosis by spear motors and fuel upon recovery of the vehicle from spear motor unworked on at 500,000/=. Under Annexure D to the Plaint the Plaintiff effectively pleaded and proved the said costs which are in the sum of **Ugshs. 450,410/** and
375 these are accordingly awarded as such.

The Plaintiff also pleaded for taxes paid towards the registration of the car amounting to Ugshs. 14,825,526/=. In reply the Defendant submitted that the car owner pays the requisite taxes and not the Defendant.

380 For a claim of special damages to succeed, it ought to have been proved that the loss incurred by payment of taxes, was the direct result of the Defendant's conduct, which of course was not the case. The damage resulting from the floods at the defendants premises had no bearing on the plaintiffs' tax
385 obligation and the fulfillment thereof.

The Plaintiff's payment of taxes for the registration of their vehicle was a fulfillment of their prior obligation. This tax liability incurred by the Plaintiff cannot therefore be transferred to the defendants.

390 The Plaintiff also prayed for legal fees paid to Muwema, Mugerwa & Co. Advocates amounting to Ugshs 1,500,000/= and to SYBA Associated Advocates amounting to Ugshs 1,000,000/=. This claim was disputed by the Defendant.

I have perused Annexure C to the Plaint which are receipts
395 issued by Muwema, Mugerwa & Co. Advocates to the Plaintiff in the sums of Ugshs 15,000,000 and Shs 100,000. It was however contested by the defendants, on grounds that the suit was not filed by Muwema & Co. Advocates and that they were not called to testify.

400 I have not found evidence of payment to Syba Advocates.

Whereas it indeed may be true that the suit was not filed by Muwema and Co Advocates, as contended by the defendants, a claim not made by the plaintiffs, the Plaintiff states at Paragraph 4 (g) of the Plaint that the law firms of Muwema &
405 Company and of Syba Advocates were used to generate correspondences with the defendants. They do not base on their claim on the fact that the said lawyers filed the suit on their behalf. They refer to them as their "then lawyers". I am inclined to award the special damages of Shs 1,600,000 in

410 legal fees and drafting two letters as proved by annexure C to
the plaint.

The Plaintiff pleaded loss of revenue from 1st May 2013 at the
rate of Ugshs 200,000/= per day amounting to Ugshs.
438,000,000/=.

415 In reply, the Defendant submitted that the alleged loss of
revenue is nowhere pleaded in the Plaint as the Plaintiff pleads
loss to the tune of Ug.Shs.121,540,000 but which also was not
specifically proved and that it ought to fail.

As rightly submitted by the Defendant's Counsel, the loss of
420 revenue was never proved. Except for the pleading and prayer,
no evidence was presented to prove or substantiate this claim.

The Plaintiff also pleaded special damages in respect of air
tickets for Attorney Benard Okong in December 2013 and
July 2014 at Ugshs 5,984,000/= and air tickets for Bishop
425 Leon Richardson in May 2013 and Sept 2014 at 5,984,000/=
and expenses incurred by both in upkeep and accommodation
at Ugshs 6,144,000/=. In reply Counsel for the Defendants
submitted that that money had no receipts tendered or an
indication that they used to stay in a particular hotel and that
430 the claim should fail in that respect.

As already stated special damages must be specifically pleaded
and proved. It is not sufficient to just plead them, but evidence
has to be provided to substantiate the claim. In this particular

case, neither documentary evidence nor oral evidence was
435 presented to substantiate this claim. Contrary to what the
Plaintiff pleaded at Paragraph 4(h) of the Plaint, no air tickets
nor cogent evidence of hotel residence or expenditure was
submitted to prove the claim. The Plaintiff failed to prove the
special damages in this respect.

440 It therefore follows and I so find, that the Plaintiff is only
entitled to special damages amounting to a sum of Ugshs.
23,043,721/ being the only amount that was satisfactorily
proved.

Interest

445 The Plaintiff submitted that he suffered damages for the period
the car was not working, wasted a lot of time trying to resolve
the impasse and the whole time wasted in Court in pursuit of
justice yet in actual sense the Defendant was well aware that
he was responsible for the damages caused on the Defendant's
450 car and asked Court to award interest on general damages at
25%.

In reply the Defendant's Counsel submitted that there was no
contract to repair the vehicle nor was the Plaintiff deprived of
his money and proposed interest at Court rate set out in
455 Section 76 CPA.

Under **Section 26 of the Civil Procedure Act** where there is
no agreement for payment of interest, Court has discretionary

powers to award interest. In the case of **Orient Bank Limited Vs Gilfilian Air Conditioning (Ug) Ltd (supra)**, Justice Flavia
460 Anglin cited with approval the case of **Crescent Transportation Co. Ltd vs B.M Technical Services Ltd CACA 25/2000** where Court held that;

*“where no rate of interest is proved, the rate is fixed at the discretion of Court. However, it is recognised that in commercial
465 transactions, the award of interest should reflect the current commercial value of money.”*

Premised on the foregoing precedents, I find interest on general damages at the rate of 25% excessive considering the circumstances of the case.

470 I accordingly award interest on general damages at the rate of 17% per annum from the date of judgment until payment in full.

I also award interest on special damages at the rate of 17% from the date of filing the suit until payment in full.

475 **Costs**

The Plaintiff prayed to be compensated for the damages suffered and also the expenses incurred in his efforts to secure justice in this matter through an order of special damages, general damages with interest and costs of the suit. In reply
480 the Defendant submitted that they had proposed to settle the matter with options including importing for him another

similar vehicle, but the Plaintiff declined the proposal. That had the Plaintiff accepted this, he would have mitigated loss or damages and costs and proposed 1/3 of the taxed costs.

485 Its trite law that costs of any cause, action or matter follow the event unless the Court for good cause orders otherwise. - See **Orient Bank Limited Vs Gilfilian Air Conditioning (Ug) Ltd (supra) and S.27(2)of the CPA.**

As established by now, the Plaintiff is the successful party and
490 is entitled to costs. However, the law gives this Court discretion to act otherwise where there is a good cause.

In paragraph 12 of his Witness Statement, Mr. Ssebukuse Pontiaus pointed out that the Defendant's director, in a bid to resolve this dispute, offered three options which included
495 buying the car at the value it was bought, importing for the Plaintiff a new similar car and paying the price in the invoice and other clearing costs but that the Plaintiff rejected these options.

In my understanding, the Defendant's gesture was one of a
500 person who wanted to resolve the dispute which in my view is a good cause for mitigation of costs.

As such I accordingly award 3/4 of the taxed costs.

Final Orders

- i. The Plaintiff is awarded general damages of Ugshs.
505 50,000,000/(fifty million only)

ii. The Plaintiff is awarded special damages in a total sum of Ugshs. 23,043,721/

510 iii. Interest to accrue on the award of general damages at the rate of 8% per annum from the date of judgment untill payment in full.

iv. Interest to accrue on the award of special damages at the rate of 19% from the date of filing the suit until payment in full.

v. The Plaintiff is awarded 1/2 of the taxed costs.

515 Delivered at Kampala by email to Counsel for the respective parties and signed copies for the parties placed on file this 30th day of October, 2020.

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520 RICHARD WEJULWABWIRE

JUDGE