

CIVIL SUIT NO. 0064 OF 2021

VERSUS

(Before: Hon. Lady Justice Patricia Mutesi)

1. The plaintiff's case is that on 17th September 2015, the now defunct Execution Division of the High Court (hereinafter "Execution Division") issued a warrant directing the 1st defendant to attach, impound and sell the plaintiff's crates of beer by public auction in order to recover a judgment debt which the plaintiff owed to the 2nd defendant. On 21st September 2015, the 1st defendant impounded 3,810 crates of beer and soda belonging to the plaintiff. The plaintiff asserts that the 1st defendant disobeyed subsequent court orders staying further execution and requiring him to release the attached goods. Further that he sold the goods by private treaty and at an undervalued price. In his return to the Court, the 1st defendant indicated that he had sold only 2,701 crates and that the remaining 1,109 crates could not be sold because they had wasted away. The Plaintiff seeks declarations that the defendants acted fraudulently in selling the attached beverages without a court order, and that the 1st defendant was negligent in executing his duties as bailiff. The plaintiff also seeks to recover the monetary value of the attached goods, plus damages, interest and costs.
2. On the other hand, the 1st defendant's case is that pursuant to a warrant of attachment and sale issued to him on 17th September 2015, he attached the

plaintiff's assorted and alcoholic beverages on 21st September 2015 and made a return on the same day with an inventory identifying the properties attached. He further sought the Court's permission to conduct an immediate sale of the attached goods since they were perishables, but all in vain. That he later made similar requests to the Head of the Execution Division and the Principal Judge over the same matter but he got not remedy. He asserts that on 22nd October 2015, he sold off the remaining goods since they were vulnerable to uncontrollable waste. He maintains that the sale was lawful and that he did not cause loss to the plaintiff in any way.

3. Additionally, the 2nd defendant's case is that it duly notified the 1st defendant about the interim order staying further execution after the attachment and the consent order requiring him to release the attached goods to the plaintiff. The 2nd defendant insists that 1st defendant ignored the said orders and proceeded to sell the goods. The 2nd defendant maintains that the 1st defendant's actions are attributable to him alone.

Issues

4. The following issues have arisen for Court's determination:
 1. Whether the plaintiff's suit against the 1st defendant is barred by law.
 2. Whether the defendants were fraudulent in selling and/or disposing of the attached goods without a court order and in failing to account for all the attached goods.
 3. Whether the 1st defendant was negligent in the execution of his duties.
 4. What remedies are available to the parties.

Representation and hearing

5. At the trial, the plaintiff was represented by Mr. Ronald Tusingwire and Mr. Saddam Solomon of M/S Ortus Advocates, the 1st defendant was represented by Mr. Felix Ampeire of M/S Byarugaba & Co. Advocates and the 2nd defendant was represented by Mr. Arthur Mwebesa of M/S A. Mwebesa & Co. Advocates.

6. The parties adduced both oral and documentary evidence in support of their respective cases. PW1 was David Kimaka, the plaintiff's Head of Business Integrity. He explained the genesis of the dispute and provided details relating to the sale of the attached goods by the 1st defendant. PW2 was Salem Cheman, the Plaintiff's Trade Quality Executive. He testified about the quality standards of the plaintiff's products, their life span and how they should be handled once they leave the brewery. The plaintiff adduced 11 documentary exhibits which were admitted and marked consecutively from P.EX. 1 - 11.
7. DW1 was the 1st defendant. He told Court that he was appointed by the Execution Division to execute a warrant by attaching and selling motor vehicles and crates of beer belonging to the plaintiff in order to recover a judgment debt. He maintained that he performed his role in accordance with the law. He adduced and relied on 9 documentary exhibits, 8 of which were admitted and consecutively marked D1.Ex. 1 – 8. The last exhibit (the ruling in Misc. Application No. 3036 of 2015) was marked as D.ID.1 but counsel for the 1st defendant did not produce an original copy thereof after the hearing. DW2 was Isaac Henry Ssegobe, a director in the 2nd defendant. He told Court that the 2nd defendant relayed all relevant court orders to the 1st defendant, but that the 1st defendant remained adamant and proceeded to sell off the attached goods. The 2nd defendant adduced 3 documentary exhibits which were admitted and consecutively marked as D2.Ex. 1 – 3.

Resolution of Issues

Issue 1: Whether the plaintiff's suit against the 1st defendant is barred by law.

8. This issue arises from a preliminary point of law raised by the 1st defendant against the suit. First, counsel for the 1st defendant argued that the suit was filed outside the strict limitation period set by the law for actions against public officers as provided for under Section 4 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72. He submitted that that provision bars all actions against public officers which are not instituted

within 6 (six) months from the date of the neglect or default complained of, or in the case of the continuance of the injury or damage, within 3 months after the ceasing or the injury or damage. His view was that since the cause of action against the 1st defendant arose on 2nd November 2015 when the attached goods were sold off yet the present suit was filed on 27th January 2021 (5 years and 2 months after the cause of action arose), the present suit is barred by the law of limitation.

9. Second, counsel for the 1st defendant submitted that the suit is barred by Section 34(1) of the Civil Procedure Act which requires that all questions arising from execution are to be determined by the executing court and not by a separate suit. He concluded that the plaintiff had no right to institute a separate suit to challenge the execution process since such a challenge ought to have been presented as a miscellaneous application within the execution proceedings from which the warrant was issued.
10. In reply, counsel for the plaintiff submitted that Section 4 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72 does not apply to the present facts because the 1st defendant is not a public officer as defined under Article 175 and 257 of the Constitution. He further cited R. 12 (2) (b) of the Judicature (Court Bailiffs) Rules 2022 which bars granting a bailiff's license to a public officer. He added that, in any case, the plaintiff's claim is based on both negligence and fraud yet the said provision only provides a limitation period for causes arising out of negligence of public officers. Furthermore, counsel for the plaintiff submitted that Section 34(1) of the Civil Procedure Act only applies in situations where the challenge to execution is between the parties to the suit from which the execution arose. Since the present suit also involves the 1st defendant as a party yet he was not party to the proceedings from which the execution arose, the plaintiff was entitled to bring a separate suit.
11. Having considered the submissions and authorities cited by the parties, I am inclined to find that the plaintiff's suit against the 1st defendant is not barred by law. The first arm of the 1st defendant's objection to the suit rests on the

true legal meaning to be ascribed to a “public officer” as referred to in Section 4 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72. Article 175(a) of the Constitution of the Republic of Uganda, 1995 defines “public officer” to mean any person holding or acting in an office in the public service. Article 175(b) of the same Constitution defines “public service” to mean service in any civil capacity of the Government the emoluments for which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament.

12. The mandate of a bailiff springs from Sections 41(2)(w) and 46 of the Judicature Act which anticipate that a court may appoint and bond a broker or agent to execute its orders and warrants. It follows that a bailiff is an officer of court who is appointed and bonded by the court to execute its orders and, or, warrants. There is, therefore, a very clear distinction between a bailiff and a public officer. In fact, Rule 12(2)(b) of the Judicature (Court Bailiffs) Rules, 2022 (S.I. No. 53 of 2022) provides that a bailiff’s license may not be granted or renewed where the applicant is a civil servant or public officer in current employment. This confirms that a bailiff, who is an officer of court, cannot, at the same time, be a public officer. Accordingly, the 1st defendant’s argument on limitation fails.
13. The second arm of the 1st defendant’s objection is that Section 34(1) of the Civil Procedure Act demands that all challenges to execution must be settled by further applications arising out of the execution proceedings and by the same executing court, and not through a separate suit. However, as counsel for the plaintiff correctly submitted, that provision applies only when the question/dispute arising from the execution is between the parties to the suit from which the execution arises. If the question/dispute involves other parties, the provision does not apply.
14. It is trite law that a court bailiff can neither be referred to as a party to the suit from which the execution arises nor as a representative of any of the parties thereto. For this reason, it would be improper to join a court bailiff in proceedings under Section 34 of the Civil Procedure Act. A bailiff who

wrongfully or unlawfully executes a court order or warrant should be brought before court by the aggrieved party in a suit separate from the one brought under Section 34 of the CPA. See **Hannington Wasswa & Anor v Maria Onyango Ochola & 3 Ors, SCCA No. 22 of 1993** and **Francis Nansio Micah v Nuwa Walakira, SCCA No. 23 of 1994**, both cited with approval in **Philemon Wandera & 2 Ors v Yesero Mugenyi & Anor, CACA No. 61 of 2009**. As a result, the 2nd arm of the 1st defendant's objection also fails and I find that the plaintiff's suit against the 1st defendant is not barred by law.

Issue 2: Whether the defendants were fraudulent in selling and/or disposing of the attached goods without a court order and in failing to account for all the attached goods.

15. In all civil cases, the plaintiff has the duty to prove his or her case on a balance of probabilities (see **Miller v Minister of Pensions [1947]2 All ER 372**). In the present case, the plaintiff has alleged 2 instances of fraud against the defendants. First, it was alleged that the defendants sold the attached properties without a court order and basing upon an inaccurate valuation, and second, that the defendants failed to account for all the products attached.
16. In **Fredrick J.K. Zaabwe v Orient Bank Ltd & 5 Ors, SCCA No. 04 of 2006**, the Supreme Court defined "fraud" to mean "an intentional perversion of truth for the purpose of inducing another, in reliance upon it, to part with some valuable thing belonging to him or to surrender a legal right". Fraud includes any and all actions or omissions calculated to deceive another that a certain state of affairs exists whereas not. I have reviewed the warrant of attachment and sale (P.Ex.2) issued to the 1st defendant. It expressly directed him to attach the moveable properties specified in its schedule (4 motor vehicles and 12,000 crates of beer) and to sell the same by public auction in order to recover a judgment debt of UGX 707,034,220/= along with the costs of the execution.
17. In **Fountain Feeds Limited & Ors v KCB Bank Uganda Limited & Ors, HCMA No. 208 of 2020**, "public auction" was defined to mean a public sale of

property to the highest bidder by one licensed and authorized to do so and in which the goal is to obtain the best financial return for the seller by free and fair competition among bidders. The Court propounded a 5-part test for determination of what amounts to a public action. This test involves the following elements:

- (a) property must be sold to the highest bidder;
- (b) the sale must be conducted by a licensed bailiff;
- (c) the goal or aim of auction is to get the best financial return.
- (d) there must be free and fair competition by bidders/competitive bidding
- (e) the auctioneer must act in good faith (in the interest of both parties in a case of recovery of a debt).

The Court in that case continued to say that for a bailiff to prove that a sale of attached property was by public auction, that bailiff must adduce an advertisement of the public sale by auction, a list of people who submitted their bids and the different bids he or she received, as a starting point.

18. During the trial, the 1st defendant (DW1) conceded in cross examination that he did not advertise the sale of the attached goods and that he did not sale them by public auction. Indeed, he did not adduce any advertisement of the sale, any list of bidders or any bid document. That testimony was corroborated by Exhibit D2.Ex.3 which is a letter written by the then Head of the Execution Division at the time in response to a complaint made against the 1st defendant by the plaintiff. The letter expressly confirms that the 1st defendant sold the attached goods without an appropriate court order. It is evident that the 1st defendant sold the attached goods by private treaty yet the details of these private transactions, including the identities of the buyer(s), have never been placed on Court record in any return. It is, therefore, clear that the 1st defendant did not sell the attached goods by public auction, contrary to the express directions in the warrant.
19. The 1st defendant deliberately ignored the express and unambiguous language of the warrant directing him to sell the attached goods by public

auction. He intentionally represented to the buyer(s) of the attached goods that he was empowered to sell them by private treaty whereas not.

20. Furthermore, the plaintiff alleged that the goods were fraudulently undervalued before sale. Counsel for the plaintiff referred to P.Ex.4 (tax invoices) and P.Ex.11 (excel spreadsheet summary of the value of the liquid, bottles and crates impounded by the 1st defendant). He submitted that the valuation report did not differentiate the different types of beer attached, yet there were different brands with different prices, and omitted to tabulate the independent values of the empty bottles and crates. Counsel referred to the 1st defendant's clarification in cross examination to the effect that the DW2 was present and observed the attachment. He concluded that both defendants are liable for the undervaluation. Counsel for the 1st defendant insisted that allegations of undervaluation merely on grounds that the plaintiff's factory prices were not met are meritless.
21. It is unfortunate that the 1st defendant did not bring any valuer from the M/S Ojomoko Consultants, who are said to have conducted the valuation, to testify on his behalf and provide more clarity on how the valuation was conducted. Dr. Ochwo Ochieng Ojomoko who signed off the valuation report would have been the best person to explain his expertise in valuation of beverages and to assure the Court of the accuracy of his report. As PW2 correctly pointed out, it is clear from the valuation report that the said valuers only made a visual assessment and did not do any analytical assessment of the goods which the 1st defendant alleged to have "rotted". In my view, it was only through such a detailed and scientific laboratory analysis that the Court would have been sure that some of the drinks had indeed wasted away and that they were no longer fit for human consumption. A visual/ocular assessment is not adequate to ascertain such a technical claim. For these reasons, this Court finds that the valuation was incomplete and that the resultant report is unconvincing and unreliable.
22. It appears to me that the valuation was conducted in a hasty & disingenuous manner to give a wrong impression of the value of the attached goods. It is

unlikely that the 1st defendant had any real intention of establishing the actual value of the goods he had attached. If he did, he would have subjected the allegedly spoilt goods, or samples thereof, to laboratory analysis in order to ensure that they could not be sold off for human consumption. This haphazard manner of conducting the valuation without any laboratory analysis of any sample of the allegedly rotten beer betrays the 1st defendant's fraudulent intentions.

23. The second instance of fraud alleged by the plaintiff is that the defendants were fraudulent in failing to account for all the products attached. It is undisputed that the 1st defendant attached and impounded 3,810 crates of beer and soda belonging to the plaintiff. This composition of the attached items was, from the onset, problematic because the warrant had directed the 1st defendant to only impound beer. Nevertheless, the valuation report of the goods (P.Ex.8) showed that only 3,710 crates were valued on 30th September 2023 (9 days after the attachment). In cross examination, the 1st defendant stated that the excluded 100 crates were those in respect of which bottles had broken. He also acknowledged that he has not yet provided any account for the empty bottles and crates after the sale, yet the plaintiff made it clear that these items carry their own independent value and are often returned after sale in ordinary business parlance.
24. There are clear discrepancies in the 1st defendant's returns and accountability. In the 2nd November 2015 letter on deposit of proceeds of the sale in Court (P.Ex.7 and D1.Ex.8), he said that he had sold only 2,701 crates of beer out of the 3,810 crates which he had impounded and alluded that the beer in the remainder of the crates had rotted. However, in cross examination, he said that that letter had a typing error and that he had actually sold "3,701" crates and not "2,701" crates. In my view, this is a major contradiction in the 1st defendant's evidence since the 1st defendant is now trying to explain away the absence of over 1,000 crates of beer and soda without filing a return of execution to clarify on the matter earlier.

25. It is trite law that major contradictions and inconsistencies in a party's evidence will result in the evidence being rejected unless they are satisfactorily explained away (**Sarapio Tinkamalirwe v Uganda, SC Crim. Appeal No. 27 of 1989**). In this case, a sufficient explanation for the inconsistency would have involved the production of a subsequent return of execution clarifying on the error in the number of crates sold. Besides, the parole evidence rule in Sections 91 and 92 of the Evidence Act renders the 1st defendant's oral testimony inadmissible to the extent that it attempts to alter and modify the contents of his 2nd November 2015 return to Court. In any case, that testimony is an unequivocal admission that the return he filed was false. I am satisfied that the 1st defendant was fraudulent when he failed to provide a complete and exhaustive account of the execution to the Court.
26. The final contention in this issue relates to whether or not the 1st defendant's fraud is attributable to the 2nd defendant. The 1st defendant admitted in cross examination that DW2 (the 2nd defendant's director) was present at the time when, and place where, the goods were impounded. However, he also stated that DW2 was not present at the warehouse when the goods were being offloaded from the trucks. None of the other witnesses corroborated this testimony and there is no signature of DW2 on the inventory attached return of execution filed in Court on 21st September 2015 after the attachment. On his part, DW2 testified that he always informed the 1st defendant of the court orders and consent judgments stopping further execution as they arose. He maintained that the 1st defendant refused to heed the orders and insisted on selling the goods despite knowing about the developments in court.
27. It is trite law that when execution is illegal, it is the bailiff who is solely liable for any resultant loss or injury unless it is proved that the judgment creditor sanctioned or ratified the bailiff's wrongful act (see **Kanji Naran Patel v Noor Essa & Anor [1965]1 EA 484** cited with approval in **Owembabazi Enid v Guarantee Trust Bank Limited & 2 Ors, HCCS No. 0063 of 2019**). For the 2nd defendant to be saddled with the 1st defendant's fraud, the plaintiff ought to have adduced evidence to prove that the 1st defendant's actions of unlawfully selling off the attached goods were, at all material times,

sanctioned or ratified by the 2nd defendant. On a balance of probabilities, I do not find that the plaintiff discharged that burden. The Plaintiff's oral and documentary evidence came short in showing any of the alleged connivance between the two defendants. I, therefore, exonerate the 2nd Defendant from any liability for the 1st defendant's fraud. This issue is partially answered in the affirmative and I find that the 1st defendant was fraudulent in the execution of his duties.

Issue 3: Whether the 1st defendant was negligent in the execution of his duties.

28. Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. For liability in negligence to be established, a plaintiff must prove that the defendant owed him a duty of care, that the defendant failed to satisfy that duty of care to the required legal standard and that the defendant's failure to satisfy the required duty of care to the required legal standard caused reasonably foreseeable injury to him or her (see **Mugisha Felix & 2 Ors v Attorney General, HCCS No. 237 of 2019**).
29. In the execution of court orders and warrants, a bailiff is not an agent of the judgment creditor. He or she is an agent of the High Court. He or she must take all reasonable steps to ensure that the court order or warrant is executed to the strict letter of the law. Bailiffs have an obligation to take ordinary care and to exercise ordinary prudence in the conduct of their work. While a bailiff is entitled to qualified immunity for all lawful acts done in the performance of his or her functions pursuant to Section 46(2) of the Judicature Act, he or she is not protected from the repercussions of conducting an execution which contravenes the law. The standard of care expected of a bailiff is that which would be expected of a reasonable bailiff conducting the same execution.
30. In his testimony, PW1 told Court that the 1st defendant was negligent when he failed to store the attached goods securely and in good conditions, to

ensure that all the attached goods were accurately valued, to take out an insurance policy for the products and to file a proper account after the sale. PW2 testified that all alcoholic and non-alcoholic beverages manufactured by the plaintiff have a shelf-life of 6 months to 1 year. He clarified that the attached goods had been manufactured in early September 2015 and were at least 5 months away from their expected expiry date when they were assessed and valued on 30th September 2015 (nine days after they had been impounded). He reminded the Court that the valuation report (D1.Ex.5) confirmed that the attached goods had been stored in an unventilated place and exposed to direct heat from the sun through the iron sheets which could have affected them thereby making them unsuitable for human consumption.

31. In his defence, the 1st defendant (DW1) explained that the attached goods were perishables and prone to wastage by natural causes. He stated that he appealed to the Head of the Execution Division and the Hon. Principal Judge for indulgence, but all in vain, and that caused the attached goods to waste in storage.
32. It is indisputable that the 1st defendant had a duty of care to ensure that the goods impounded are appropriately stored in order to protect them from wastage and to preserve their shelf life. This is a duty which the he acknowledged during his cross examination. I am also convinced that the 1st defendant breached his duty of care by failing to store the attached goods in conditions that would have been adequate to preserve the shelf life of the goods.
33. During cross examination by counsel for the 2nd defendant, the 1st defendant conceded that he did not have sufficient storage facilities for the attached goods. He conceded that he did not ascertain the size of the goods before impounding them and made no prior arrangements to ensure that there was adequate storage for them. He acknowledged that he kept the first two trucks of the attached goods in a ware house, but since the 3rd truck could not fit, the crates thereon were kept in a tent erected outside the

warehouse. This forced some bottles of beer to expire and burst. He also claimed that he had taken out an insurance policy for the attached goods in 2015 but a copy of the policy agreement was not adduced in evidence. Furthermore, the 1st defendant conceded in cross examination that he attached both beer and soda even when the warrant issued to him only directed him to impound crates of beer. He accepted that he has never filed any document on court record indicating the purchasers of the attached goods.

34. I am of the firm view that a reasonable bailiff conducting the same execution would have taken care to first ascertain whether the size of the goods he was going to impound would fit within the storage space he had, and if not, to make arrangements to acquire additional space. This should have been done before the goods were impounded. Second, a reasonable bailiff would have read the storage instructions on the labels of the drinks, or otherwise obtained technical guidance in writing about the appropriate storage conditions, so as to preserve the shelf life of the drinks. Third, a reasonable bailiff would have taken out and adduced before the Court proof of an insurance policy cover for the goods before or immediately after impounding them. Finally, a reasonable bailiff would have filed a comprehensive return with the Court providing the details of all the purchases and purchasers of the goods so that the Court can ascertain the propriety of those transactions. Since the 1st defendant failed to do any of these acts, he breached his duty of care.
35. In addition to the above, the 1st defendant had a duty to ensure that he realises the best possible financial return from the attached goods. The admission in his pleadings, testimony and submissions that several beer bottles broke after attachment is, in and of itself, an indictment on the reckless manner in which the crates were handled during offloading and during storage. The 1st defendant's failure to store the goods in adequate conditions for their preservation directly compromised their market value. His omission to conduct a public auction and advertise the sale and invite bidders for a public auction, contrary to the express letter of the warrant,

further compromised the financial returns he got from the sale. Furthermore, his omission to ensure that a scientific laboratory examination was conducted on all, or samples of, the allegedly wasted drinks meant that several bottles could have been disposed of yet they had not yet gone bad and were still fit for human consumption.

36. On the last element of loss or injury, counsel for the plaintiff submitted that the 1st defendant's breach of his duty of care resulted in financial loss to the plaintiff since the attached goods were sold so cheaply and at an under value. Counsel for the 1st defendant submitted that there was no financial loss caused to the plaintiff since the goods had already started to go bad after the attachment and had caused a stench in the area where they were being stored. He maintained that the 1st defendant got the best possible financial return from the execution.
37. In my considered view, the financial return from the execution cannot be divorced from the manner of storage of the goods, the mode of sale selected by the 1st defendant and the inadequacies in the valuation process. These 3 factors significantly compromised the value of the goods thereby causing financial loss to the plaintiff since many of the goods were disposed of without scientific certainty of their alleged wastage while the rest were sold, more or less, at a give-away price. This loss was reasonably foreseeable and it was not remote in any way because it was expected that the degeneration of the goods due to poor storage would affect their marketability and that an inadequate valuation process would fetch a low price for the goods.
38. For the above reasons, this issue is answered in the affirmative.

Issue 4: What remedies are available to the parties.

Declarations

39. Following the above findings, the Court allows the plaintiff's prayers for declarations that the 1st defendant was fraudulent in selling the attached goods and failing to provide a comprehensive account of the execution and that the 1st defendant was negligent in executing his duties.

Special damages

40. The plaintiff sought special damages in two categories. First, the plaintiff sought to recover the monetary value of the liquid beverages in the attached goods. Second, it sought to recover the monetary value of the crates and empty beer and soda bottles. Relying on P.Ex.4, P.Ex.11 and the testimony of PW1, counsel for the plaintiff submitted that the plaintiff is entitled to recover UGX 177,307,391.94 being the tax exclusive value of the liquid in the attached goods and UGX 76,487,500 being the value of the empties leading to a grand total of UGX 285,709,906. He added that since the 1st defendant already deposited UGX 65,800,000 from the impugned sale, he should be ordered to pay the remainder of UGX 219,909,906. Counsel for the 1st defendant did not make any specific response to these figures in his submissions. He simply reiterated the earlier preliminary objections and invited the Court to dismiss the suit.
41. It is trite law that special damages must be strictly pleaded and proved (see **Stanbic Bank Uganda Limited v Hajji Yahaya Sekalega t/a Sekalega Enterprises, HCCS No. 185 of 2009**). The plaintiff specifically pleaded the special damages and also availed oral and documentary evidence to show the factory/market value of the liquid beverages, empty bottles and crates in the attached goods. The defendants have acknowledged that the 1st defendant attached, impounded and sold the plaintiff's goods. It has also been proved that the 1st defendant sold the goods at a time when there was an interim order issued by the Execution Division staying further execution, without holding a public auction and basing upon a grossly inaccurate and unreliable valuation report. I am satisfied that the plaintiff has discharged the burden placed upon it by the law to prove special damages and it is entitled to the special damages claimed of UGX 219,909,906.

General damages

42. Counsel for the plaintiff submitted that the actions of the 1st defendant greatly inconvenienced the plaintiff and caused it damage as the plaintiff lost the value of the products and had to compensate the distributors who had

ordered these products. He prayed for and order for general damages to the tune of UGX 50,000,000. Again, counsel for the 1st respondent did not specifically respond to the plaintiff's prayers and submissions on general damages.

43. The plaintiff adduced oral evidence through PW1 which showed that the plaintiff had suffered inconvenience due to the 1st defendant's decision to disobey court orders to release the attached goods and instead sell them by private treaty. The plaintiff also adduced credit notes from 3 distributors showing that they had already made orders for the attached goods. It can only be expected that the plaintiff suffered a real business inconvenience in sorting out these distributors after the 1st defendant refused to return the attached goods despite the issuance of court orders requiring him to stop further execution and to release the goods. Since general damages are the ordinary and natural but unquantifiable loss expected to have been suffered as a result of the breach of a right, this Court deems it fair to award general damages to the plaintiff for the inconvenience brought about by the 1st defendant's actions to the tune of UGX 40,000,000.

Punitive damages

44. In **Daniel Oboth v The New Vision Printing and Publishing Corporation, SCCA No. 12 of 1990**, the Supreme Court held that punitive damages may be awarded not merely to compensate the plaintiff but also to punish the defendant and mark the outrageous nature of his conduct. I am convinced that an order for payment of punitive damages ought to issue in this case.
45. The 1st defendant, who is an officer of the Court and who had been bonded to execute a warrant of the Court, attached and impounded the goods without confirming if he had enough space for their safe storage. He impounded beer and soda yet the warrant only allowed him to impound beer. In addition, the warrant he was executing had directed him to sell the goods by public auction but he sold them by private treaty.
46. I have already stated that punitive damages are awardable to punish, deter and express outrage of Court at the defendant's egregious, highhanded,

vindictive, oppressive and, or, malicious conduct. They are awarded to warn society that similar conduct will always be an affront to society and to the court's sense of diligence and decency (see **Ahmed El Termewy v Hassan Awdi & 3 Ors, HCCS No. 95 of 2012**). I am satisfied that, in this case, the 1st defendant acted in a dishonest, unsanctioned and barbaric manner. Accordingly, I award punitive damages of UGX 15,000,000 to the plaintiff.

Interest

47. Court has the discretion to award interest on sums due to a successful party. Interest is meant to compensate the plaintiff for the deprivation of the use of his money that remained unpaid at the time of institution of the suit (see **Esero Kasule v Attorney General, HCMA No. 0688 of 2014**). This Court deems it just to award interest on the special damages at the rate of 20% per annum from 23rd October 2015 when the goods should have been released to the plaintiff until payment in full and further interest on the general damages and punitive damages at the rate of 12% per annum from the date of judgment until payment in full.

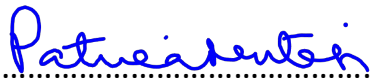
Costs of the suit

48. Costs ordinarily follow the event unless the court shall, for good reason, order (see **Ruryabeita Frank v Beyunga Kenneth & 3 Ors, HCCA No. 59 of 2020**). I find no reason why the plaintiff should not recover the costs of the suit. I also find that this suit could have been averted if the 1st defendant had followed the interim order staying further execution which was issued by the Execution Division on 23rd September 2015, which order was brought to his attention by the 2nd defendant. Accordingly, the 1st defendant shall pay one half of the 2nd defendant's costs in this suit.

Reliefs

49. Consequently, I make the following orders:
- i. A declaration that the 1st defendant was fraudulent in selling the plaintiff's attached beverages doth issue.

- ii. A declaration that the 1st defendant was negligent in executing its duties as a bailiff doth issue.
- iii. The 1st defendant shall pay **UGX 219,909,906 (Uganda Shillings Two Hundred Nineteen Million, Nine Hundred and Nine Thousand, Nine Hundred and Six)** in special damages to the plaintiff.
- iv. The 1st defendant shall pay **UGX 40,000,000 (Uganda Shillings Forty Million only)** in general damages to the plaintiff.
- v. The 1st defendant shall pay **UGX 15,000,000 (Uganda Shillings Fifteen Million only)** in punitive damages to the plaintiff.
- vi. The 1st defendant shall pay interest on the special damages at the rate of **20%** per annum from 23rd October 2015 when the goods should have been released to the plaintiff, until payment in full and further interest on the general damages and punitive damages at the rate of **12%** per annum from the date of judgment until payment in full.
- vii. The 1st defendant shall bear the Plaintiff's costs of the suit and one half of the 2nd defendant's costs of the suit.


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Patricia Mutesi

JUDGE

(30/11/2023)