

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO.418/97

GEORGE ASIIMWE..... PLAINTIFF

VERSUS

ATTORNEY GENERAL..... DEFENDANT

BEFORE: THE HON. MR. JUSTICE P. MUGAMBA

JUDGMENT

The plaintiff brought this action against the defendant in the latter's capacity under the Government Proceedings Act. When the plaintiff closed his case the defendant offered no evidence. Therefore the plaintiff proffered his written submissions.

The facts of this case are not complicated. The Chief Magistrate Masindi ordered a Toyota Stout pick-up sold as a lost and found item of property. The plaintiff bid and after he was successful had the vehicle sold to him as scrap by PW2, a Court Auctioneer for Shs.700,000/=. Later the vehicle was released from the Police Station at Masindi where it had hitherto been held and released to the plaintiff. The plaintiff took it to a garage for repair and repair was accomplished. When later the plaintiff took it back to the garage the vehicle was impounded by people alleging they were from the Criminal Investigation Department. Later on at CID the plaintiff was informed it was at the request of the Director of Public Prosecutions they had impounded the vehicle in question.

Five issues were agreed and framed as:-

1. Whether the plaintiff lawfully bought the motor vehicle in question?
2. Whether the motor vehicle was impounded by agents of the defendant?
3. Whether the defendant is vicariously liable?
4. Whether the plaintiff suffered any loss?
5. What remedies are available to the plaintiff?

Regarding the first issue, the plaintiff testified as PW1 and called the evidence of Amos Bendedule, the Auctioneer. Given the general receipt of payment which was tendered as exhibit P1 in support of the testimony and the fact that the defendant did not challenge this evidence I find for a fact that the plaintiff lawfully bought the motor vehicle as scrap.

The plaintiff claims that the motor vehicle was impounded by an agent of the defendant, to wit police from CID.

Thereafter it was taken from the garage to the Police Station at Masindi. The District Police Commander told the plaintiff he did not know why the vehicle had been impounded but wrote to CID Headquarters Kampala a letter introducing the plaintiff and his complaint. No action was taken save letting the plaintiff know that the Director of Public Prosecutions had requested they impound the vehicle. I am satisfied that the fact the vehicle was taken and kept at Masindi Police Station by people from CID gives credence to the contention that agents of the defendant were at work in due course of their employment. This evidence was never controverted and I would answer it in the affirmative. In light of the Government Proceedings Act, Cap.69 and Article 119(4) (c) of the Constitution the third issue is similarly answered in the affirmative.

The fourth issue is whether the plaintiff suffered loss. The plaintiff gave evidence of his purchase of the scrap motor vehicle at Shs.700, 000/=. That was money he expended. The plaintiff also tendered exhibit P2 showing items of spare parts he purchased in order to have the motor vehicle back on the road. I decline to consider the purchases as loss to be taken into account in relation to this case. First of all he bought scrap. He claims he took it to a garage but no mechanic was called to testify in support of that claim, let alone that there was a credible motor vehicle which was impounded. The details of the vehicle such as its engine

number, its chassis number, let alone its registration number, remain an enigma. In short there is no motor vehicle to talk of. I find that if there was loss it was loss of that scrap purchased at Shs. 700,000/= but that the spares if any cannot be said to be part of that loss. Special damages must be specifically pleaded and proved.

The last issue relates to remedies. I have pronounced myself elsewhere concerning loss. In the result I find that the plaintiff is entitled to general damages of Shs. 2,000,000/=. The facts of this case do not persuade me, as they are, to consider punitive or exemplary damages. However the plaintiff shall be entitled to:-

1. Shs. 700,000/= being the cost of the scrap.
2. General damages of Shs. 2,000,000/= (two million shillings).
3. Interest of 30% p.a on (1) and (2) from the date of judgment until full realization.
4. Costs of the suit.

P.Mugamba

Judge

01/03/02