

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HIGH COURT CIVIL SUIT NO. 569 OF 2003

RASHID SSENYONJO LWANGA T/A
NAMENGO MERCHANDISE PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY DEFENDANT

BEFORE: THE HON. MR. JUSTICE R.O. OKUMU WENGI

JUDGMENT:

The plaintiff has sued the Revenue claiming that in January 2003 he lawfully imported batteries. He paid duty on them. Then out of the blue the Revenue in March 2003 pounced upon a store, claiming that the batteries there in were uncustomed, seized them and has refused to surrender them to the plaintiff. The defendant denies this claim and insists that whereas the plaintiff imported his cells the ones seized were of another person altogether who had smuggled them, and these were duly impounded. At the beginning of the trial the plaintiffs' documents evidencing his imports were exhibited in the form of 6 exhibits. Three issues were framed for trial as follows:-

1. Whether the plaintiff's goods were seized and impounded by defendant.

2. If so whether the seizure was unlawful.
3. Remedies.

The Plaintiff called 3 witnesses while the defendant called 7 witnesses. For the plaintiff, Wampalu Mukama Assad a welder testified as PW1. He told court how in March 2003 he was hired by URA operatives to proceed to Miro Road in Jinja to cut open padlocks using gas. He did it in the presence of LCs and a policeman. He saw inside that store boxes of Tiger Head batteries which the URA men then loaded onto a lorry that was parked in the yard. Mr Musa Mubiru a lorry driver at Mbiko was PW2. He witnessed the raid on the Miro Road Stores by the URA and the gas welder's intervention. He was at the scene by sheer coincidence as he had gone to collect coffee. He told court that he did not know the owner of the store that was cut open but that he knew that the plaintiff was the owner of the goods in the store. The plaintiff himself testified as PW3. He told court that he was the tenant in the store at the centre of this case and that his landlord was one Suleman Mafabi. He even presented in court a tenancy agreement (Exhibit P3) stamped on 23/10/2003 but which subsisted for the very period of January to March 2003 that is the subject of events in this case. He verified his importation of tiger head batteries as stated in his plaint and told court that he stored them at his Miro Road Stores. He then stated that later he found them to have been seized in his absence. He then testified that he has failed to get the defendant to release them to him.

For the defendant Mrs Kirunda Margaret DW1 told court that as a Revenue Officer she dealt with an import transaction of Ivukula Import and Export (exhibit D.1). The document stated the goods to be Hand made paper and

paperboard or newsprint, which came on container DVRU 1597871/225427 and lorry No. UAE 936B/UAB 733B on 4/3/2004 Via Malaba and Busitema. The invoices, Customs Form C63 (Kenya) and the Bill of Lading all refer to this consignment destined to Jinja Customs (ICD). The second defence witness Katono Dawda Samulaba told court that he was a Revenue Protection Operative. He told court that the truck mentioned in Exhibit D1 on 5/3/2003 became suspected of smuggling by misdeclaration of the cargo. He traced the truck to a store in Jinja but found it empty of its goods. He found there both the driver and turn boy of the truck. He then told court that he oversaw the impounding of the goods now claimed by the plaintiff. Suzan Mudoola DW3 then told court that she traced the container and lorry described in Exhibit D.3 at Plot 6 Miro Road in a store. The goods had been off loaded as the container was empty. She also testified that she recovered the C63 (Kenya) from the truck driver. She then witnessed the breaking into the store to recover the goods subject of this claim. She was able to confirm that the particulars in the C63 were the ones on the empty container. Mr Okurut Richard DW4 a police officer also told court that on the 5/3/2003 he witnessed the truck UAB 936E/UAE 733 B carrying a container together with other witnesses at Plot 6 Miro Road Jinja. He also witnessed the impounding of the batteries. Mr Abbas Hussein Ruyondo testified as DW5 and told court that he was the driver of the suspect truck from Kenya to Jinja. He told court that the goods belonged to Ivukula Enterprises and that he took them direct to the stores and offloaded goods as tiger head batteries. He witnessed the breaking into the store and impounding of the goods. He also verified Exhibit D1 as relating to his load. He also testified that he never carried any goods for the plaintiff when Exhibits P1 and P2 were put to him in Cross-examination.

Jawuya David testified as DW6. He told court that he was a guard at the Miro Road store belonging to one Bumali and that the stores held Tiger head batteries. He also told court that he saw these batteries being brought in on 4/3/2003 and offloaded from a vehicle. Finally Det constable Wanyama William testified as DW7. He told court that on 5/3/2003 he went with URA officers to Plot 6 Miro Road and found the same truck there. He also found the driver there. He also witnessed the breaking of the store and the impounding of the goods.

From the testimonies of all there witnesses I am able to say that what the defendant impounded were the goods that had been consigned as described in Exhibit D.1. It is clear that the truck and goods came through Malaba to Jinja and were diverted away from the ICD and directly offloaded into the store on Miro Road. The truck and empty container remained there overnight and were impounded together with the goods that were retrieved from the store. I believe the testimony of the defendant's witnesses who all described the truck, container and the owner of the import. The documents were evidence of a misdeclared consignment of contraband – said to be newsprint when in actual fact they were the ubiquitous Tiger Head batteries they turned up to be inside the store that was broken open on Miro Road. It was a typical case of smuggling and the defendant's officers were quick to act and impound the uncustomed goods. When this happened the plaintiff who had earlier on imported tiger head batteries was brought in to claim that the store was duly rented by him and that the impounded goods were batteries earlier in January imported by him. There was definitely a game as between Ivukula, Namengo, the plaintiff and others to conceal the batteries as newsprint and cheat the Revenue. I am therefore convinced

by the evidence that the plaintiff's goods were not seized or impounded by the defendant. What seizure took place was of smuggled batteries using a false declaration and by evading the ICD such that the batteries ended up on Miro Road where they were got and lawfully impounded by the defendant from the smugglers. If the impounded goods were really those of the plaintiff they were not the ones he had earlier on imported but had come in Via Malaba under the documents exhibited as D.1 in the names of Ivukula. Whatever the case the Plaintiff cannot recover anything from the defendant as I have answered all the issues in the negative. His case is therefore dismissed with costs to the defendant.

R.O. Okumu Wengi

JUDGE

22/6/2004.

30/6/04

Kanabahita for Defendant

Magala Miriam for Plaintiff.

Court: Judgment read.

Sgd by: Namundi Godfrey

D/REGISTRAR.

