

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 719 OF 2002**

1. FRANCIS DRAKE LUBEGA     }  
   :.....: PLAINTIFFS  
2. TESCO INTERNATIONAL LTD }

**VERSUS**

UGANDA RAILWAYS CORPORATION } :.....: DEFENDANT

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

**JUDGMENT:**

The two plaintiffs brought this suit against the defendant for damages for breach of carriage contract. It is contended that in 2002 the plaintiff imported ten containers of the ubiquitous Tiger Head batteries via Dar es Salaam harbour and placed them for Railway haulage to Kampala. When the goods were inspected at the defendant's godshed in Kampala, 1100 cartons were found missing. The total value of the missing batteries were put at \$39,494, which is claimed as special damages. The defendant denied liability altogether. At the hearing three points of fact were agreed on, namely:-

1. There was a contract to transport 2 containers each with 1100 cartons of tiger head batteries from Dar es Salaam to Kampala.
2. One container was delivered with all the goods intact.
3. The second container was inspected at defendants good shed in Dar es Salaam and found to be completely empty.

The plaintiffs called one witness and tendered seven exhibits while the defendant called three witnesses in a trial in which only two issues were framed, namely:-

1. Whether the defendant is liable for the missing goods.
2. Whether plaintiff is entitled to the remedies sought.

In his evidence Mr Francis Drake Lubega PW1 told this court as follows:-

“When the goods reached Kampala the URA confirmed arrival to me by arrival advice note dated 10/10/2002 for two containers DPRU 155861/7 and DPRU 155473/5.”

He told court that he had made per entries and had paid URA on 8/10/2002 for the taxes amounting to shs. 32,079,737 for 2 containers. He went on:-

“Then we went for verification exercise with URC and URA officials and URA Police. We opened the 2 containers at the URC godshed Kampala. We got one container full of Cargo i.e. DPRU 155473/5. The second one was completely empty.”

The witness testified further that the seals were checked and found to be tampered with whereupon the matter was reported to the police who investigated it and confirmed that the seals had been tampered with.

On its part the defendants first witness Musana Brogan Estacio confirmed to court the empty container being sited in a multipartite inspection. But he hold court the seals were intact. He stated:-

“It was not the fault of the Railways that the goods were missing. I looked at the seals, the slippers seals and the TZ Railway cartons seals which were both not broken or changed that is they were intact. He presented a tally sheet.

The witness told court that a police officer on site one Olar also confirmed to him the seals were intact. The witness testified that it was possible for containers to be carried empty, as was the case with two other containers of the same plaintiff that arrived empty in November. He did not produce the evidence, as he had

not brought in the records. The witness further told court that carriage based on 40 tons paid for by the customer was a flat rate premised on the customers own declaration of the weight content of any container. He explained that the defendant only came to get the goods as from Mwanza port. He stated:-

“The goods were 40 tons based on the customers declaration. We do not weigh the goods but go by customer’s declaration. It is at verification time that URC gets to know that a customer cheated us by over declaring. \$ 855 is our tariffs for anything up to 40 tons. We charge that figure based on declaration. It is a flat figure whether container is loaded or not. It is his advantage if he loads maximally.”

The witness explained to court that the defendant did not put its own seals on containers but relies on other seals already fixed thereon. He also described the security presence at the good shed and claimed that he had not got report of goods getting spirited out of the good shed. He explained further that the Uganda Railways doest not open containers to first verify if they were loaded, with goods, how heavy or if at all.

Another witness Tabula Moses also testified that he was the one who opened the container, finding it empty. He also confirmed that URC did not put its own seals on containers or check goods.

He stated that Olar was the police officer at the scene and he was not aware that other persons claimed to have found the seals tampered with. Then Detective Corporal Olar Christine testified. She confirmed to have found the container empty with a Tanzania Railways seal intact. But she told court something else. She stated that the seal was of a plastic type which is easily removable by hand. That steel ones need steel cutters. She stated:-

“This was the first time for me to see a completely empty container at verification. When seen on the container it appears intact but when customs officer plucked it I am not sure if he found it tampered with. But it looked intact on sight.”

The witness also doubted how Warule a Regional CID officer Police attached to Railways wrote (in Exhibit P.4) that the seal had been tampered with. She stated:-

“I do not know he got this conclusion. I know containers for sensitive goods like batteries or mixed goods are usually kept high up till verification when it is lowered. I do not know what he (Warule) means that there was negligence on part of security.”

Now the plaintiff's case relied heavily on this report Exhibit P.4. I note that Warule did not testify but his report was admitted as an Exhibit. This was done after the plaintiff had closed his case and the defendant did not insist that Warule the maker should be called to testify and be cross-examined. With no great doubt being cast on his report by Olar, an otherwise intelligent and precise officer, but whose evidence is inconclusive on the issue in trial, it was difficult to say that what Warule said was not strong evidence proving that the seals were tampered with. Other witness brought by the defence did not yield to such a conclusion being tenable. But this is their side of the story. Either way, it all points to the fact that the container at the material time of its delivery to the importer/plaintiff, was completely empty. At this stage the defendant could not deny negligence on its part in accepting to transport goods for the plaintiff whereas the goods were non existent and was there was just their container. It is difficult to understand the explanation given about payment of flat rates and loading maximization expected of an importer. If the explanation is to be accepted, then the documents would show that what the defendant hauled for the plaintiff was a container, an empty container. But the exhibits (vide Exhibit P.6.7) described the goods as general merchandise with actual weights of 59,000 kgs.

In a contract for of carriage of goods where the defendant failed to deliver the goods to the plaintiff he was in breach of contract.

The duty of a common carrier is well settled in that failure to convey as in this case only the packaging container was available to be delivered is a breach of the contract. See **Julian Mbahile Vs Transocean (U) Ltd** (1985) HCB 82. No exception to the liability and or breach has been raised and or proved by the defendant.

I have come to the conclusion that the defendant in failing to deliver or convey to the plaintiff was in breach. He must therefore be held liable for that breach and in answering the core issue framed in this trial I find and hold that the defendant is liable for the missing goods. The only remaining issues is one of assessing the burden of liability taking into account the principles of law which makes it imperative for a court to give atonement for all loss and damage that reasonably arises and or could be contemplated as usually likely to arise there from: **Hadley Vs Baxendale** (184) 9 Exhibit 341. In this context the plaintiff would be entitled to claim the full value of his goods; the freight charges and the tax element. These all come to the sum of \$32,895 according to the evidence on the record. On this sum I would allow him modest profit margin by our standards of 25% i.e. \$8000. This may be less than the possible profit expected by the plaintiff but is reasonable. In all therefore I would enter Judgment for the plaintiff against the defendant for:-

- (1) \$ 40895 being the value of the goods, freight and profit margin
- (2) Interest on the above sum taken at its present day Uganda Shillings equivalent, at the rate of 15% p.a. W.E.F. the date of breach till payment in full.
- (3) Costs of this suit.

R.O. Okumu Wengi

**JUDGE**

15/11/2004.

14/12/2004

Wakida for Plaintiff

None for Uganda Railways Corporation

Senabulya Court Clerk.

Judgment read in open court in the presence of above persons.

R.O. Okumu Wengi

**JUDGE**

14/12/2004.



