

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA

**HCT-05-CV-CS-0103-2002**

MWEBAZE ROBERT .....PLAINTIFF

VS

FRED MUGUME..... DEFENDANT

**BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA**

**JUDGMENT**

The plaintiff filed this suit seeking the following remedies:

- a) General damages for wrongful seizure.
- b) General damages for loss of business and business revenue.
- c) Special damages.
- d) An order for recovery of the value of the motor vehicle or its repair expenses.
- e) Interest on the decretal amount at court's rate till payment in full
- f) Costs of the suit.
- g) Any other or further relief court may deem meet.

Both parties agreed that on 25th October 2001 the defendant extended a loan of Shs. 2,900,000/= to the plaintiff. As security the parties executed a sale agreement for vehicle 856 UBS, a Datsun pickup, showing the defendant had bought the vehicle from the plaintiff. For good effect the plaintiff handed over the log book of the vehicle to the defendant. In addition the plaintiff issued a cheque for Shs. 2,900,000/- post dated to 1st February 2002 in favour of the defendant. Both parties agree the loan was eventually cleared by the plaintiff who took out yet another loan of Shs. 2,900,000/- from the defendant. I must mention that when the first loan was paid off the post dated cheque. I have mentioned earlier was returned to the plaintiff. Upon getting another loan from the defendant, the plaintiff had issued yet another post dated cheque for Shs. 2,900,000/- this time dated 5th March 2002, in favour of the defendant. This later cheque was

received in evidence as Exhibit D.1. and was manifestly dishonoured in the bank on 24th April 2002 when presented owing to the account having been closed. Motor vehicle 856 URS registered in the names of the plaintiff and owned by him later came into the possession of the defendant and eventually was towed to the parking yard of Mbarara Police Station. It was vandalized. Hence this suit.

At the outset to the hearing the parties agreed the following facts:

1. The defendant extended a loan facility of Shs. 2,900,000/= to the plaintiff on October 2001.
2. On that 25th October 2001 the plaintiff gave the defendant securities which were a cheque for Shs. 2,900,000/=: a sale agreement in which the plaintiff purported to sell the pickup motor vehicle in issue to the defendant for Shs. 2,900,000/=. Two weeks later a log book for the pickup vehicle in issue was given to the defendant also as security.

The following issues were agreed:

1. Whether or not the defendant forcefully seized the pickup motor vehicle in issues.
2. Whether or not the defendant was entitled to seize the pickup in issue.
3. Whether or not the plaintiff had paid up the loan to the defendant at the time of the alleged seizure.
4. Whether the plaintiff suffered the alleged damages.

The plaintiff testified as PW1 and told court that on 13th March 2002 he was driving along Mbarara-Kabale road in the company of Bonny Barugahare, PW2, when near Ruti trading centre the defendant demanded for motor vehicle 856 URS from him. The defendant had said that because the plaintiff had failed to pay back the loan the sale agreement would be invoked and the defendant would keep the vehicle until the plaintiff paid up the loan. According to PW1 he obliged and handed over the vehicle because he had given it as security when he got the loan. It was the evidence of the plaintiff that at the time he handed over the vehicle he had not finished paying back the loan. It was his evidence that when he finished paying back the loan the post dated cheque he had given to the defendant as security had been returned to him. PW2 testified that he was present when the defendant took the motor vehicle from the plaintiff. It was his evidence that when the defendant requested for the motor vehicle the plaintiff had handed it over

and that at the time the motor vehicle was security for the loan which had not been paid back. From the evidence of the plaintiff I find nothing suggestive of forceful seizure of the motor vehicle. Indeed the defendant denies ever seizing, let alone forcefully, the vehicle in issue. I hold that the defendant never forcefully seized the vehicle.

Regarding the second issue, it is an agreed fact that the motor vehicle itself was security for the loan. Not only was the log book for the vehicle handed over to the defendant as creditor but also there was a sale agreement of the motor vehicle by the plaintiff to the defendant for Shs. 2,900,000/-. In the circumstances there is no reason why the defendant could not seize the pickup particularly since the plaintiff had not yet paid up the loan as the plaintiff admits was the case at the time. I find the defendant was entitled to seize the motor vehicle in question.

The third issue is whether or not the plaintiff had paid up the loan to the defendant at the time of the alleged seizure. Both PW1 and PW2 testified that at the time of the alleged seizure the plaintiff had not yet paid up the loan to the defendant.

The plaintiff claims damages. Damages are a consequence of loss or injury and are recoverable from the person who is liable for inflicting the loss or injury. A person injured must, as far as is possible in terms of money be put in as good a position as if the wrong had not been committed. See *Phillips vs Ward* [1956] 1 All ER 874. In the instant case the plaintiff claims that the defendant was responsible for vandalizing his motor vehicle to such an extent that he cannot use it any more. The plaintiff puts forward the market rate of the vehicle as well as the amount of money necessary to put it back on the road. I must add that there is also a report by the Inspector of Vehicles showing the defects on the vehicle as of 13th October 2002. Notably missing is evidence of the state of the motor vehicle before the defendant took possession of it to be contrasted with the dilapidated state it later assumed. There is also no evidence that it was the defendant responsible for the sorry state of the vehicle. It behoves the plaintiff to adduce the necessary evidence if he is to recover for any alleged damages. See Sections 101, 102 and 103 of the Evidence Act. In the circumstances I would answer the fourth issue in the negative.

Consequently this suit fails and it is dismissed with costs.

P. K. Mugamba

Judge

27th April 2005

27th April 2005

Mr. Dhabangi for the plaintiff.

Mr. Kahungu for the defendant

Parties absent

Ms Tushemereirwe court clerk/interpreter

Court:

Judgment delivered in open court.

P. K. Mugamba

Judge