

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASINDI**  
**CIVIL SUIT NUMBER 014 OF 2011**

**BUKYANAGANDI PRISCILA**  
**MUTEGEKI ABDUL**  
**ATUHURA CAROLINE**  
**AGABA MUCHOPE** ..... **PLAINTIFFS**

**VERSUS**

**THE ATTORNEY GENERAL** ..... **DEFENDANTS**

**JUDGMENT BY JUSTICE GADENYA PAUL WOLIMBWA**

The plaintiff purchased Motor Vehicle UAJ 637N by public auction from WHIP Auctioneers and Bailiffs on 12<sup>th</sup> July 2010. The sale was in response to court ordered execution in Civil Suit No. 33 of 2010, Omara Alex vs. Musa Mustafa.

After purchasing the vehicle, the plaintiffs started using it. However, on 4<sup>th</sup> August 2010, police officers from Masindi District Police Station seized and impounded the vehicle on the orders of the District Police Commander Kiboga.

According to the District Police Commander Kiboga, the vehicle was seized because it was a subject of a criminal investigation vide Kiboga CRB 2670/2010, where Musa Mustafa had alleged that his vehicle had been stolen by Alex Omara. The facts on the ground were however, different. A perusal of the facts shows that Omara Alex, lent Musa Mustafa UGX 3,783,000, to repair the suit vehicle. In consideration of the loan, it was agreed that Alex Omara would use the vehicle at a rate of UGX250, 000 per week to recover his money.

Despite this agreement, Mustafa breached the agreement, whereupon Omara sued him at the Chief Magistrates Court, vide Civil Suit Number 33 of 2010. It is worth noting that prior to judgment, the suit vehicle was attached pending judgment. Judgment was entered in favour of Omara against Mustafa. Mustafa did not pay the decretal amount. Omara attached the vehicle in execution and the same was then sold to the plaintiffs, by Whip Auctioneers and Bailiffs.

Instead of Mustafa appealing against the decision of the Chief Magistrate, Mustafa, went and reported a case of theft of his vehicle against Omara Alex at Ntunda Police Station. The Police acting on this complaint commenced a criminal investigation which led to the impounding of the vehicle. Explanations and appeals by the Plaintiffs to the Police and the Office of the Director of Public Prosecutions to return the vehicle were ignored. While it is not known what eventually happened to this vehicle, this vehicle, was never returned to the plaintiffs. It is this action of the

police taking away and converting the suit vehicle from the plaintiffs that compelled them to sue the Attorney General in his capacity as the statutory defendant under the principles of vicarious liability. The plaintiffs called two witnesses while the Attorney General did not call any witnesses.

At the commencement of the trial, the following facts were agreed to by the parties:

- That Motor Vehicle Registration number UAJ 637N was attached by Whip Auctioneers and Bailiffs on the orders of the court in Civil Suit No. 33 of 2010 of the Chief Magistrates Court of Hoima.
- Prior to the attachment and sale, the Chief Magistrate Court of Hoima had on the 14<sup>th</sup> Day of April 2010 ordered the attachment and production of the vehicle to the court as security for fulfilment of the decree in Civil Suit No. 33 of 2010.
- That the plaintiffs purchased the suit vehicle from WHIP Auctioneers and Bailiffs by public auction and as a consequence of the orders of the court to attach and sale the vehicle in satisfaction of the decree in Civil Suit No. 33 of 2010;
- Upon purchase of the subject vehicle from the mentioned auctioneers, the plaintiffs became rightful owns of the subject vehicle and hence forth started using the vehicle for commercial purposes.
- Acting on the orders of the Police in Kiboga where a one Musa Mustafa, lodged a complaint of theft of the subject vehicle vide, the police from Masindi Police Station on the 4<sup>th</sup> of August seized the vehicle from the plaintiffs.
- That on the 16<sup>th</sup> August 2010, one Mustafa Musa made a complaint at Ntunda Police Post of theft of his motor vehicle Reg. UAJ 637 N Canter by One Omara Alex.
- That motor vehicle Registration UAJ 737N was later impounded in Masindi vide Kiboga CRB 2670/2010 and later taken to Kiboga Police Station where it was exhibited.

The following facts were in dispute:

- That the seizure of the vehicle by the police was lawful;
- That prior to the seizure and retention of the vehicle, the police were aware that the vehicle was earlier on placed in the custody of court as security for fulfilment of a decree in Civil Suit No. 33 of 2010;
- That when the vehicle was seized by the police from Masindi, the plaintiffs were charged nor detained for the theft of the vehicle; and
- That the plaintiffs on various occasions contacted the police and the office of the Directorate of Public Prosecutions for the return of the vehicle though they have never received it to date.

### **Issues**

The following issues were agreed at the trial.

1. Whether the seizure and retention of the vehicle was unlawful:
2. Whether the defendant is liable for the actions of its agents;

3. What remedies are available to the parties?

### **Representation**

The Plaintiffs were represented by M/s Nyanzi Kiboneka & Co Advocates while the Defendant was represented by Mr. Bichachi, a staff of the Chambers of the Attorney General.

### **Consideration of the issues**

Issue number 1: Whether the seizure of the vehicle was lawful?

On the issue of whether the seizure and retention of the suit vehicle was lawful, counsel for the plaintiff submitted that the plaintiffs lawfully acquired the vehicle after buying it from a public auction, sanctioned by a court vide Civil Suit N0. 33 of 2010. He submitted that the plaintiffs produced a sales agreement marked as exhibit P1 and a warrant of attachment marked as exhibit P2 to prove that they bought the vehicle from a court authorized auction. Counsel further submitted that the plaintiffs having lawfully acquired the vehicle, they had every right under article 26 of the Constitution to enjoy the property in the vehicle.

With regard to the issue of the plaintiffs purchasing the vehicle after the warrant of attachment had expired, counsel submitted that the defense was precluded from asserting that there was no effective sale, since it was agreed during the scheduling conference that upon purchase, the plaintiffs became the rightful owners of the vehicle.

He submitted that Order 22 rule 71 of the Civil Procedure Rules provides that no irregularity in publishing or conducting the sale of moveable property shall vitiate the sale. He submitted that the sale of the suit vehicle was valid regardless of whether it was done during the existence of the warrant or outside the time frame for the warrant. He submitted that the plaintiffs acquired good title to the car after paying for the car through a court sanctioned auction.

With regard to the legality of the impounding of the vehicle, counsel submitted that the plaintiffs made efforts to inform the police after the vehicle was seized about how they had lawfully acquired the vehicle but that the police ignored them and even ignored a request by the Office of the Directorate of Public Prosecutions to study the police file regarding the car.

He submitted that while the Police was right to conduct investigations following a complaint of theft of this vehicle, they did not have the right to determine who owned this vehicle. He submitted that the power to determine ownership of the vehicle was a reserved in the court and not in the Police or indeed, the Office of the Directorate of Public Prosecutions. In summary, it was the plaintiffs case that the seizure of the vehicle was unlawful.

The Attorney General did not call evidence in this case but made submissions on the matter.

He submitted that the plaintiffs bought the vehicle on 12<sup>th</sup> July 2011, six days after the warrant of attachment had expired. He submitted that the sale and purchase of the vehicle on an expired was irregular and went against the court order and consequently, there was no legal sale of the vehicle.

Secondly, he submitted that the police lawfully seized the vehicle because it was subject of a criminal investigation in Kiboga CRB 2670 /2010. He submitted that the police are empowered under the Police Act and the Criminal Procedure Code Act to impound and seize any object that is a subject of investigations with or without a warrant provided the police identify themselves.

Last but not least, he submitted that the Police had no control over the sanctioning of the police file and the decisions taken by the Resident State Attorney, Kiboga, in ordering the vehicle to be returned to Musa Mustafa, the original owner of the vehicle.

He submitted that if the plaintiffs were aggrieved by the decision of the Police and the ODPP, then they should have challenged their actions in the criminal trial and not suing the Attorney General.

There is no doubt in my mind that the plaintiffs bought the suit vehicle from a court sanctioned execution. The plaintiffs paid UGX 6,000,000 being the full value of the vehicle and by this act, the plaintiffs, *prima facie* lawfully acquired the vehicle and by consequence thereof, title of this vehicle, that initially had been vested in Mustafa, *prima facie* passed on to the plaintiffs.

Secondly, it is undisputed that the Police, are empowered under section 29(1) of the Police Act, to seize articles that might be required as exhibits in criminal investigations. Section 29(1) of the Police Act provides that:

**A police officer who is lawfully on any premise or any other place may seize anything there if he or she has reasonable grounds to believe –**

**That the thing might be used as an exhibit in relation to any offense which he or she is investigation; and that it is necessary to seize that thing in order to prevent it from being concealed, lost, tampered with or destroyed.**

This section should be read with section 4 of the Police Act which provides for functions of the Police, which enjoins the police to keep law and order in the community by curtailing crime.

The Police, correctly received a criminal complaint from Mustafa that his vehicle, which happens to be the suit vehicle, had been stolen. Seized with the power to investigate the alleged crime the police, lawfully took custody of the suit vehicle, from the plaintiffs, as an exhibit. There was nothing wrong with the actions of the police at this point.

The challenges for the police, however, started, after the its officers, who were investigating the case, interviewed the plaintiffs and got to know that the vehicle, in question had been sold to the plaintiffs vide a court auction in Civil Suit number 33 of 2010. Furthermore, the police through the office of the ODPP, at the headquarters and Kiboga, through various correspondences between the plaintiffs' counsel knew that the vehicle in question had been sold to the plaintiffs by Whip Auctioneer in an execution sanctioned by the court. The Police, having been appraised of the position of the vehicle should have terminated its investigations in the matter and directed Mustafa, to legally claim his vehicle from the plaintiffs and Alex Omara, if at all, he had good cause.

As correctly, argued by the plaintiffs' counsel, the police armed with these facts, had no business in determining the ownership of this vehicle, the same, having been determined by the civil court. The police, and indeed, the Resident State Attorney, acted unlawfully when having known that the car had been bought at a court ordered auction passed on the suit vehicle to Mustafa. The police, here, exceeded their powers, and I do not therefore agree with the Attorney General, that the Police, could indefinitely hold on to the vehicle and later on transfer it to Mustafa, when they knew that the vehicle was now the property of the plaintiffs.

Before I conclude this issue, the Attorney General, had concerns about the legality of the sale of the suit vehicle to the plaintiffs. He submitted that Whip Bailiffs and Auctioneers, sold the vehicle to the plaintiffs on 16<sup>th</sup> July 2010, using a warrant that had expired on 6<sup>th</sup> July 2010. The Attorney General argued that a sale made under an expired warrant is no sale at all and that in this case, the title of the plaintiffs, was vitiated by the illegalities in the warrant. The plaintiffs, on their part, maintained that the sale was lawful and argued that if at all there were any irregularities in the warrant, then such irregularities are curable under Order 22 rule 77 of the Civil Procedure Rules.

Before I deal with the legality of the sale, let state here that all court orders, however, irregular, remain lawful orders until otherwise varied or set aside by the court. The same is true of all sales that are sanctioned and carried out by court bailiffs, who are officers of the court. The sale, of the vehicle by Whip Bailiffs and Auctioneers, which falls in limb, has never been set aside by a lawful court order and therefore, remains a valid sale until set aside or varied by the court.

The Attorney General, by implication, is asking me to inquire into the sale of the vehicle in this matter. I would have been comfortable inquiring into the legality of the sale / auction, if all the parties to the sale- that is to say the parties in Civil Suit No. 33 of 2010 and Whip Bailiffs and Auctioneers, were before me and had addressed me on the issue of the legality of the sale, which was not raised in the pleadings and evidence, but during submissions. I would have also been happy to address this matter fully if the Attorney General had called evidence to back up its arguments. Therefore, in the absence of evidence from the defendant and failure to hear from potential parties who participated and conducted the sale, it will be unfair to conduct an inquiry into the legality of the sale, without causing injustice to parties I have not listened to.

Before taking leave of the matter, I would like to address the plaintiffs' contention that I irregularities regarding the sale of the car under an alleged expired warrant can be cured under Order 22 rule 71 of the Civil Procedure Rules or put it differently that an expired warrant can confer good title to a buyer at a court sanctioned auction.

Order 22 rule 71 of the Civil Procedure Rules, provides that:

**No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale, but any person sustaining any injury by reason of the irregularity at the hands of any other person may institute a suit against him or her for compensation, or (if that person is the purchaser) for the recovery of the specific property and for compensation in default of the recovery.**

This rule has been considered in Mulla, the Code of Civil Procedure, 16<sup>th</sup> edition by Solil Paul and Anupam Srivastava, who dealt with Order 21 Rule 78 of the Indian Code of Civil Procedure, which is similar to our Order 22 rule 71. The learned authors say that the rule:

**provides for the case of irregularity in publishing or conducting the sale of moveable property...A sale in public auction of moveables, without any application by any party, and without notice to the judgment debtor is without jurisdiction and liable to be set aside under this rule.**

The learned authors continue to say that:

**If the sale proclamation warrants a title which fails, the injured party may apply to set aside the sale, for this not a case of irregularity.**

The input of the learned authors and a critical analysis of O.22 rule 71 of the Civil Procedure Rules is that not all irregularities in a warrant can be cured by the rule. It is only irregularities limited to publication say of the sale or warrant and shortcomings in the conduct of the sale, which don't go to the root or legitimacy of the warrant or sale that covered under the rule. All irregularities that go to the root of the warrant or the sale are not covered by the rule. I do not therefore agree with the plaintiffs that a sale under an expired warrant is among the irregularities envisaged under Order 22 rule 71 of the Civil Procedure Rules

As I indicated above, I would have been prepared to inquire into the legality of the warrant under which the plaintiffs bought the vehicle, but because the defendant did not adduce evidence on the alleged illegality and the parties and bailiff were not heard, I will leave the warrant intact and therefore the sale to the plaintiffs.

For these reasons, I find that though the impounding of the vehicle was initially lawful, the impounding became unlawful, after the Police continued to hold on the vehicle and eventually passed it over to Mustafa, when they became aware that the vehicle had been purchased by the plaintiffs under a court sanctioned execution. Issue number one is therefore, answered in the affirmative.

Issue number 2: Whether the defendant is liable for the actions of its agents?

The plaintiffs submitted that the Attorney General is liable for the actions of the Police and ODPP. He submitted that the Police acted with material irregularity in handling Mustafa's complaint. He submitted that the Police should have carried out thorough investigations after impounding the vehicle and interviewing the plaintiffs to determine who owned the vehicle based on the competing interests. He submitted that the Resident State Attorney should have professionally advised the Police regarding the interests of the parties but failed in its duties.

He submitted that the Police and ODPP are agents of the Attorney General and that as such the Attorney General is vicariously liable for their actions. The Attorney General submitted that the Police, lawfully impounded the vehicle and as such the Attorney General cannot be liable. He also, submitted that the Attorney General is only liable for the tortious omissions or actions of its agents.

The Attorney General further submitted that the plaintiffs cannot and do not have any rights to dictate to police how it does its work. Likewise, that the ODPP is independent in the exercise of its powers and that the court cannot allow the decisions of the ODPP to be investigated, as such an action would open flood gates of litigations and suffocate successful investigations and prosecution of criminal matters.

This issue was premised on the presumption that the Police and officers of the ODPP acted lawfully in impounding and eventually handing over the suit vehicle to Mustafa. However, as I have found, though the ministerial officers initially acted within the law, they lost protection of the law, when after being appraised of the facts that the vehicle had been lawfully sold to the plaintiffs under a court sanctioned sale, they still went ahead to continue holding on to the vehicle and eventually handed it over to Mustafa, when they should not have done so.

The master of the Police, who in this case is the Government of Uganda through the Attorney General, cannot argue that the Police and staff of the ODPP, did their work in a wrongful way and is not therefore liable for their actions. The Attorney General, is vicariously liable for the actions of the police and the staff of the ODPP, who mismanaged the criminal case and deprived the plaintiffs of their vehicle. Issue number 2 is therefore answered in the affirmative.

Issue number 3:           What remedies are available to the parties?

The plaintiffs prayed for recovery of the vehicle or in the alternative, claimed for the value of the vehicle; special damages, general damages, interest on special and general damages and payment of costs.

On the issue of recovery of the vehicle, the plaintiffs submitted that they lawfully bought the vehicle and are therefore entitled to but if the vehicle is not available, then they are entitled to a refund of UGX 6,000,000 which they paid for it.

It is not doubt that the plaintiffs bought the vehicle. It is also not in doubt that the plaintiffs lost the vehicle at the hands of the police. The plaintiffs as owners of the vehicle are therefore entitled to. Since the vehicle, was given to Mustafa, about nine years ago, this vehicle must be in a state of disrepair or is even none existent. It would not therefore make sense to direct the defendant to restore the vehicle to the plaintiffs. In the circumstances, the best that the court can do is to order the Attorney General to refund six million shillings, in special damages, to the plaintiffs being the value of the vehicle.

On special damages under the limb of loss of business income, the plaintiffs submitted that this vehicle was making a daily income of UGX 150,000 which they had lost as a result of the defendant's actions. They submitted that while the burden is high, special damages must not always be proved by documentary evidence. See: **Kalemere Godfrey and Others vs. Unilever (U) Limited (2008) ULR 630 and Rutaama Godfrey and Another vs. The Attorney General CACA 80 of 2012.**

The plaintiffs, also relied on paragraph 6 of the plaint and the evidence of Agaba Muchope – specifically his testimony in paragraphs 4,16 and 17 of his witness statement to support their claim for special damages. In summary, the plaintiffs asked for special damages of UGX 430,950,000 reflecting lost income of 2,873 days – being the time, the plaintiffs were deprived of the vehicle.

The Attorney General submitted that the plaintiffs are not entitled to special and general damages because the purported sale and purchase of the vehicle by the plaintiffs was irregular and that the police acted in accordance with the law in seizing the vehicle. On special damages, counsel for the Attorney General, submitted that the plaintiffs had not proved them because they never led documentary evidence to prove that the vehicle was earning UGX 150,000 per day.

Special damages must be pleaded and specifically proved. See **Uganda Telecom limited vs. Tanzanite Corporation SCCA 17 of 2004**. The plaintiffs must call such evidence to show, as in this case, that the vehicle in question was making UGX 150,000 per day to justify loss of business income from the asset (vehicle). In this case, the plaintiffs relied on the evidence of Agaba Muchope, who testified that the vehicle was being hired out for UGX150,000. Agaba Muchope, did not however, produce any books of account, receipts or indeed, tell court, the exact business the vehicle was being hired or engaged for. It was therefore, difficult for the court, to decide on a balance of probabilities that the vehicle in question was making so much money for the plaintiffs. In view of this finding, I am unable to agree with the plaintiffs that they lost business income in hundreds of millions due to being deprived of the vehicle by the servants of the Attorney General. The claim for special damages is accordingly rejected.

With regard to general damages, the plaintiffs submitted that general damages are compensatory in nature and intended to offer some satisfaction to the injured party. Counsel for the plaintiffs submitted that the plaintiffs were aggrieved by the blatant and illegal acts of the defendant; suffered inconvenience and lost the right to use their property. Counsel for the plaintiffs, did not however, guide court on the quantum of damages. The Attorney General, in reply submitted that the plaintiffs were not entitled to general damages because its servants lawful impounded the vehicle and that the plaintiffs, did not have good title in the vehicle as the auction through which the plaintiffs bought the vehicle was marred with irregularities.

General damages are awarded to put the injured parties, more less in the same position, he should have been in, if the defendant had not injured him. General damages are therefore compensatory in nature as they follow the principle of restitution. In the case before me, the servants of the Attorney General committed the tort of conversion when they took away the plaintiff's vehicle and gave it to Mustafa, an act which permanently deprived the plaintiffs of the vehicle. Clerk and Lindsell, on Tort, at paragraph 13-135 (1995), say that: **damages for conversion are on principle at large: there is no need to prove financial loss in order to recover them.**

The learned authors continue to say that: **the plaintiff may recover all such damages as are the natural and direct result of the conversion, including damages for non-pecuniary interest such as inconvenience and distress at being deprived of one's property.**



It is undeniable that the plaintiffs are entitled to general damages for having been deprived of their vehicle. The question for me to determine is what should the quantum of damages be? In this case, the plaintiffs, lost income from the use of the vehicle, they were inconvenienced and suffered anguish as a result of the defendant's action. The plaintiff also lost the social benefits of using the vehicle in question. Taking all these factors into consideration and the need to put the plaintiffs in the position they would have been if the defendant had not interfered with their proprietary rights, I award the plaintiffs general damages fifty million shillings.

On payment of costs, counsel submitted that the plaintiffs were denied usage and earning of income from the vehicle and that the justice of the case demanded that the defendant should pay interest on the special and general damages from the date of filing the suit till payment in full.

Interest is awarded at the discretion of the court and the discretion must be exercised judiciously by taking into account the all the circumstances of the case. See **Uganda Revenue Authority vs. Stephen Mabosi SCCA no.1 of 1996.**

In line with section 26(2) of the Civil Procedure Act, I will award the plaintiffs interest at the court rate on the special damages of UGX 6,000,000 – being the value of the car from the date of filing the suit, that is to say 2<sup>nd</sup> November 2011, until payment in full. I also award the plaintiffs interest at court rate on the general damages from the date of this judgment till payment in full. The plaintiffs will have the costs of the suit.

#### **Decision**

In the result, I give judgment in favour of the plaintiffs with the following orders:

- a) Special damages of six million shillings being the value of the suit vehicle;
- b) General damages of fifty million shillings;
- c) Interest at court rate on the special damages from the date of filing the suit till payment in full;
- d) Interest at court rate on the general damages from the date of judgment till payment in full; and
- e) Costs of the suit.

It is so ordered.



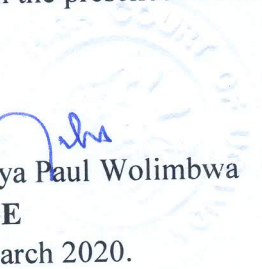
Gadenya Paul Wolimbwa

**JUDGE**

10<sup>th</sup> March 2020.

This judgment has delayed so much and I cannot continue to hold it any longer. The judgment will therefore be delivered in the absence of the plaintiff. The judgment is delivered in open

court in the presence of Mr. Moses Mugisha, State Attorney and Kamuhanda Olinga, Court Clerk.



*Paul*  
Gadenya Paul Wolimbwa  
**JUDGE**  
10<sup>th</sup> March 2020.

*Gadenya Paul Wolimbwa  
Judge*