

The Hon. Mr. Justice A.R Soluade

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO.589/87

J. KABUMBULI ::::::::::::::::::::::::::::::::::: PLAINTIFF

V E R S U S

ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: The Hon. Mr. Justice G. M. Okello

J U D G M E N T

The Plaintiff J. Kabumbuli sued the Attorney General in his representative capacity by virtue of section 11 of the Government Proceedings Act for the acts of certain Police Officers committed in the course of their employment. By his plaint, the Plaintiff claims from the defendant (a) the return of the Plaintiff Motor vehicle, a Toyota Hilux Pick-up of Registration No. UXM-312 or its market replacement value, (b) Special Damages, (c) General and Exemplary Damages and (d) cost of the suit.

The facts which gave rise to this action are that the Plaintiff owned a Toyota Hilux Pick-up of Registration No. UXM-312 which he operated for commercial purposes ferrying traders between Kampala and Busia on a daily basis for six days a week. This vehicle was being driven by one Sebuliba. In January 1987 the vehicle was arrested in Jinja for some traffic offence. The driver was charged with the offence and remanded in Kirinya Prison. In the meantime the motor vehicle was detained at the Central Police Station in Jinja. While the driver was in custody, the Police Officers at the CPS Jinja released the vehicle to some soldier of the NRA. The next time the Plaintiff

heard of his motor vehicle was that it had been smashed here in Kampala at Bakuli. It was not clear who smashed it but somehow the Plaintiff learned that it was taken to Walusimbi's Garage for repairs where it is still lying. Hence this action.

At the commencement of the hearing, the following issues were framed:-

- (1) Whether Motor vehicle No. UYM-312 Toyota Pick-up belonging to the Plaintiff was wrongly released by the Police Officers at the CPS Jinja to an unauthorised Officer of the NRA.
- (2) Whether the said Motor Vehicle was involved in an accident while in the custody of the officer of the NRA. If so whether the Motor Vehicle was totally damaged.
- (3) Whether the Police Officer and the officer of the NRA were acting in the course of their duties.
- (4) What damages if any is the Plaintiff entitled to.

It is worthy to note that no evidence was led for the A.G. Several adjournments were granted at the instance of the State Attorney who was conducting the defence of this case, for the purpose of getting to court some Police Officer³ from the CPS Jinja but these were in vain. The Police Officers never appeared to give evidence to the embarrassment of the State Counsel. This is a deplorable conduct from Police Officers. The only evidence I have in this case is that of the Plaintiff (PW1) and that of the driver of the vehicle

On issue No. above, Mr. Kateeba for the Plaintiff contended that the Plaintiff's Toyota Pick of Registration No. UKM-312 was wrongly released by the Police Officers at the CPS Jinja to an unauthorised officer of the NRA. In support of the above contention Counsel relied on the evidence of PW1 and PW2. Both these witnesses in their evidence denied authorising the Police Officers at the CPS Jinja to release the vehicle to any body. PW1, the Plaintiff testified that at the material time he was up country in Busenyi District and never authorised the i/ Police Officers to release the Vehicle to anybody. That all he had known was that his driver had gone to Busia on a routine business trip. But that the next time he heard of the vehicle was that it was smashed here in Kampala at Bakuli. That when he went to the alleged scene of the accident, he found that the vehicle had already been towed away and taken to Walusimbi's Garage. That when he went to that Garage, he found the vehicle there and that the management showed him the Accident Repair Order Card. That from the Card (Exh P1) the vehicle was taken to the Garage by a Karim of Jinja for Accident Repairs. The witness denied that he ever authorised the said Karim to receive his vehicle. He also denied that he had known that Karim before.

The driver PW2 also testified denying ever authorising the Police to release the vehicle to anybody. He stated however that when he was in custody he was called to the office of the O.C Prison where he was detained and was forced under threat of assault to sign a document which was prepared and brought from the CPS Jinja. That he did not read the document as it was written in English, a language he does not know. But that he was told that the document was to authorise release of the vehicle to

to the 'big' man. When he refused to sign the document for want of a written authority from the Plaintiff, he was ordered to sign, so he did.

From the above evidence Mr. Kateeba submitted that neither the Plaintiff nor his driver PW2 authorised the Police to release the vehicle. That attempt by the defence to suggest in their paragraph 3 of the w.s.d that the driver authorised the release is not supported by evidence. He argued that he who alleges must prove it (Section 102 EA). That no such proof is available. That consequently the Police released the vehicle without authority and that the person who received the vehicle did so also without authority.

For the state of Turyasingira the State Counsel conceded that the vehicle was handed over by the Police to a Karim but he contended that the Police handed over the vehicle on the written authority signed by the Plaintiff's driver. To this Mr. Kateeba replied that since PW2 was forced to sign the document, he was not bound by it.

Since the State concedes that the Police released the vehicle to a Karim, but that they rightly did so on the written authority signed by the Plaintiff's driver, the question I have to answer is what is the effect of a document which the signer is induced, but without consent to sign.

The law regarding the effect of a document where the signature of the signer is not accompanied by his intention or consent is that the document is invalid and of no effect on the signer. The reason is that what is important is the consent. Once consent is lacking it is immaterial how the signature is obtained, the document will be invalid

and of no effect, on the signer. This was stated in the case of Saunders -v- Anslia Building Society (1970) 3 ALLER 1961 at page 1026. This followed on earlier decision in Gallie -v- Lee (1969) 1 ALLER 1062 at 1063 where it was held that a document where signature is obtained without consent is a nullity just as if a rogue had forged the signer's signature.

In the instant case, the evidence of PW2 shows that he was forced under threat of assault to sign a document which was prepared and brought from the CPS Jinja. From the above authorities such a document is a nullity for want of consent of the signer. There is no contrary evidence to that given by PW2. For those reasons I find that the Police released without authority the vehicle to an unauthorised officer of the NRA. This answers issue No.1 in the affirmative.

This now leads me to issue No.2. This issue is whether the said Motor vehicle was involved in an accident while in the custody of the officer of the NRA. If so whether the motor vehicle was totally damaged.

For the Plaintiff Mr. Katumba contended that the vehicle was involved in accident while in the custody of the officer of the NRA and that it was damaged beyond repair. In support of this contention counsel relied on the evidence of PW1 and PW2. Both these witnesses in their testimonies denied involvement in the accident with this vehicle. PW1 testified that by the time he learned of the accident, the vehicle had already been towed from the scene to Walusimbi's Garage. That when he went to that garage the management showed him the Customer's Vehicles Repair/Service Order Exh P1. This document shows that the vehicle was taken to the Garage by a Karim of Jinja on 2/2/87 with an

order that accident Repairs be carried out on the vehicle. That the management further gave the Plaintiff Exh P2 a Letter showing the extent of the damage which the vehicle got after the accident and where the vehicle was. The document shows that the Engine block of the vehicle was cracked and the chassis were bent beyond repairs.

From the above evidence Mr. Kateeba submitted that the vehicle was involved in an accident while it was in the custody of Karim; and that it was that same Karim who took the same vehicle to the Garage for repair.

The State concedes that the vehicle was involved in an accident while it was in the custody of a Karim and the man to whom the Police released the vehicle.

From the evidence of PW1 and PW2, it is clear that neither the Plaintiff nor his driver PW2 was involved in the accident with his motor vehicle. The evidence of PW1 and Exh P1 + Exh P2 make it clear that the motor vehicle was involved in the accident while it was in the custody of a Karim the man to whom the Police released the motor vehicle. The evidence (Exh P2) shows that the vehicle is now lying in Walusambi's Garage, with a cracked Engine block and chassis which are bent beyond repair following that accident. This answers issue No2 in the affirmative.

I now turn to issue No 3 which is whether in releasing the vehicle the Police officers were acting in the course of their employment.

For the Plaintiff Mr. Kateeba contended that in releasing the vehicle the Police officers at the CBS Jinja were acting within the

wrongly. On the authority in *Muwongo -vs- AG*, I find that the police officers at the CPS Jinja were acting within the scope of their employment when they wrongly released the Plaintiff's motor vehicle No. UKA-312 to an unauthorised person. This answers issue No.3 in the affirmative.

Having found that the Police at the CPS Jinja while in the course of their employment wrongly released the Plaintiff's vehicle to an unauthorised person, thus making the defendant vicariously liable, I must now consider the question of relief-

The general principle of damages is to put the Plaintiff as far as money can do to the position he had been before the wrong complained of had not been committed. (See *Phillips -v- Fards* (1955) 1 ALLER 874).

In the instant case the Plaintiff claims the return of the very vehicle which the defendant detained or its market replacement value at the time of judgment. Counsel relied on UCB -vs- Nativu Nasswa UGA Civil Appeal No.6/82. Evidence was led to show that at the time of its detention at the Police Station, the vehicle was three months old. Counsel asked for 13 million as a propinate market replacement value of a three month old Toyota Hilux Pick-up. This was the value of a New such vehicle in May 1990. Counsel argued that in view of the inflation this amount now would be appropriate for a three months old Toyota Hilux Pick-up.

For the state, Mr. Turyasingara submitted that 13 million shillings is on the higher side for a three months old Toyota Hilux Pick-up. He suggested ten million as the appropriate market replacement value of such a vehicle.

the scope of their duty. He argued that the Police officers at the CPS Jinja having impounded the vehicle became bailee thereof and were expected in law to keep the same until the owner came to collect it after his release from Prison to which he was sent. That the vehicle was kept at the police station in the course of duty and that in releasing it to an unauthorised person, without authority, the Police officers were carrying out their duty albeit in the wrong way. He relied on the case of Mwongoo -v- AG (1967) EA 17 at page 18; Joseph Lakwago -v- AG HCCS No. 1156/88. George Brown Turvanuleka -v- AG HCCS 436/89.

For the state it was conceded that the Police at the CPS Jinja were acting in the course of their duties when they released the vehicle to the said Karin.

The law regarding vicarious liability had been re stated in the case of Mwongoo -v- AG (1967) EA 17 where it was stated that a Master may be vicariously liable for an act of his servant even if the act was done contrary to his order or where the servant acted deliberately, wantonly, negligently or even criminally or for his own benefit provided that what he did is merely a manner of carrying out what he is employed to do.

From the evidence on the record, the Plaintiff's motor vehicle was impounded and detained at the CPS Jinja following the detention of its driver for a traffic offence. The Police clearly have power to detain vehicles in such circumstances by virtue of their employment. Since they have the power to detain so they have the power to release. But because they have in the instant case released the vehicle to an unauthorised person, they carried out what they are employed to do

There has been no evidence before me as to the current market replacement value of a three months old Toyota Hilux Pick-up. But it is true, that with the inflation prices of commodities keep rising. The price of a commodity in May 1990 will not be the same in November 1990. It will be much higher. Doing the best I can in the circumstances I award eleven million shilling as the appropriate market replacement value of the vehicle.

The Plaintiff also claimed Special Damages being loss of earning. He claimed 7,360,000/= under this heading. In coming to this figure counsel relied on the evidence of PW1. This witness testified that his vehicle used to ferry traders from Kampala to Busia on a daily basis for six days a week. From this he would get a net profit of 3000/= a day. That because of the inflation the profit went up to 30,000/= per day. Counsel argued that considering the various imponderables such as break down of the vehicle, services etc, a deduction of 200,000/= should be reasonable.

For the defendant, it was submitted that the Special Damages had not been proved. To this Mr. Kateeba replied that all that was needed was cogent evidence which was given.

The law regarding Special Damages is that it must not only be pleaded but that it also must be proved. In the case of loss of earning, it was held in Sindhano -v- AG, (1978) HCB 315, that it is not necessary to produce Bank statement to prove the Plaintiff's earning before the wrong complained of was committed. That what was needed was cogent evidence showing the Plaintiff's earning prior to that.

I respectfully agree with that view.

In the instant case, the Plaintiff testified on how much he was earning by that vehicle prior to its detention and subsequent smash. That he was initially getting a net profit of Shs.300,000/= old Currency per day. This figure is converted to 3,000/=. That he was using this vehicle every day for six days a week. But that he has a similar vehicle from which because of the inflation he was later earning 30,000/= a day. Counsel prayed for a round rate of 7000/= profit a day as from 1.2.87 up to the date of judgment. This would bring a total of S Shs.7.560,000/= He argued that considering the imponderables, a deduction of Shs.200,000/= should leave 7,360,000/= which he prayed should be awarded to the Plaintiff's as loss of earning. There was no contrary evidence to that given by the Plaintiff. The Plaintiff does not have to produce his book of account to show his earning. The evidence given was quite cogent. However considering the imponderables, like, breakdown of the vehicles, cost of tyers and other repairs, slacken of business, I am of the view that a round figure of Shs. Shs.5,000,000/= is a reasonable compensation under this heading. So I award.

The Plaintiff also claims general damages for which counsel prayed for 3 million shilling. For the state however, Turyasinara submitted that the amount suggested for the General Damages is punitive and that this is not the principle of general damages.

I have already stated the principle of General Damages earlier in this case. It is to put the Plaintiff in the position he had been before the wrong complained of was committed.

In the instant case the claim is in detinue. The basis for this is Restitutio in integrum. Apart from the return of the chattel or its replacement value the Plaintiff is entitled to general damages to compensate him for the injury he sustained by the very act of detinue. (See Winfield and Jolowinez on Tort 10th Ed. Page 410-411).

Such general damages should be nominal unless the Plaintiff proves special damages. In the instant case loss of earning as a Special Damage has been proved. In these circumstances I shall award the Plaintiff a nominal general damage of Shs. 1000/= (one thousand only).

The Plaintiff also claims exemplary damages for which he suggested a sum of One Million shillings. Counsel argued for the Plaintiff that having detained the driver, there was no reason for the Police to release the vehicle to some other person. He submitted that this conduct of the Police attracts exemplary damages. He relied on the cases of *Rooks -v- Barnard* (1964) AC 1129; *Obongo -v- Kisumu Council* (1971) EA 91 and *Kampala city council -v- NAKAYE* (1972) EA 446.

For the defendant Mr. Turyasingura argued that exemplary damages are awarded where the conduct of the Government official is oppressive, or high handed. He submitted that from the evidence on record, the conduct of the Police was not oppressive or highhanded by releasing the vehicle to some other person. Hence it does not attract exemplary damages.

I considered the above arguments. I also considered the above cases which state the principles in which exemplary damages may be awarded. I further had the occasion of looking at the case of *Kyambadde -v- Mbugi District Administration* which also dealt with the question of

exemplary damages. From the above cases it can be summarised that exemplary Damages can be awarded where:-

- (a) the conduct of the servant of the Government towards the Plaintiff has been oppressive, arbitrary, high handed or unconstitutional.
- (b) where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the Plaintiff. /profit
- (c) where it is provided for by statute.

An award of Exemplary Damages is a matter of discretion of the court and the Plaintiff cannot recover exemplary unless he is the victim of the punishable behaviour of the servant of the Government.

From the evidence, the Police prepared a document which purports to authorise the release of the vehicle to some other person. The document was taken to the Prison where the driver of the vehicle was detained for a traffic offence involving that vehicle. At the prison, the Prison officer forced the driver to sign this document on the strength of which the vehicle was released by the Police to third party. The above conduct of the Police is no doubt acquish but not high handed and on the authorities cited do not attract exemplary damages.

The claim under this heading is therefore rejected. In the end judgment is entered for the Plaintiff for:-

- (a) Payment of Shs. 10,000,000/= being the assessed market replacement value of the Plaintiff's vehicle now damaged beyond repair.
- (b) Payment of Shs. 5,000,000/= being loss of earning of the Plaintiff from the vehicle as from 1.2.87 to date.
- (c) General Damages of Shs. 1000/=
- (d) Interest on the above at court rates and
- (e) Cost of the suit.

G. M. Okello

G. M. Okello

J U D G E.

15/11/90

Judgement delivered in the presence of Mr. Kateeba for the Plaintiff and the Plaintiff himself. Nobody for AG was present.

G. M. Okello

G. M. Okello

15/11/90

10.25 a.m.