

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

CIVIL SUIT NO. 0035 OF 2012

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MUGEMA GODFREY ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

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

BEFORE: THE HON. MR. JUSTICE GODFREY NAMUNDI

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JUDGMENT

The Plaintiff a businessman operating a fishing and trading business filed this suit against the Attorney General of Uganda who was sued in representative capacity in accordance with the Government Proceedings Act Cap.77.

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The plaintiff seeks recovery of Shs.128,744,400/- being special damages and lost earning, general damages, interest and costs of the suit.

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The claim arises out of the actions of the Defendant's agents illegally impounding the Plaintiff's goods of trade for a period of 100 days.

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The background to this matter is that the Plaintiff carries on the business of fishing at Dolwe Island at Namiyengo District. On the 28th May, 2011, the Defendant unlawfully and without any reasonable cause impounded 2 of the Plaintiff's fishing boats complete with their fishing gear and wrongfully detained them at Dolwe Police post for a period of 100 days. The boats were released to the Plaintiff on 5/9/2011 without any charges being brought against the Plaintiff.

The said boats and nets had deteriorated due to exposure to rain and sunshine at Dolwe Police station.

Some of the impounded goods were found missing.

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The Defendant filed a written statement of defence in which a denial of the allegation of the Plaintiff's goods being impounded was made.

A joint scheduling memo was then filed and the agreed issues were outlined as follows:

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1. Whether the Defendant's servants impounded the Plaintiff's fishing boats and gear.

2. Whether the Defendant is liable to the Plaintiff for his actions.

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3. Remedies available.

Three witnesses gave evidence for the Plaintiff while Counsel for the Defendants did not show up when the matter was set down for defence.

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The Plaintiff testified and produced 2 witnesses to support his case. He narrated how his boats, fishing nets, jerry cans and the gauze for tying them were impounded by Police Officers from Dolwe Police post.

25 The Plaintiff was also arrested and taken to Dolwe Police post where he spent a night and was released the next day on Police bond. He was not charged or told what offence he had committed allegedly.

30 On 5/9/2011, his boats were returned to him and he was told that there was no case against him. He stated that he incurred losses from non-use of his boats which would have raised for him a total of shs.126,000,000/- within 100 days.

By the time the boats were released to him, they had become damaged due to the weather, leaves from the trees where the boats were kept which used to fall and rot into the boats.

5 The oars had gone missing, 12 jerry cans, 17 nets and 18 metres of tarpaulin were also missing. The value of the missing items were enumerated as shown in the Plaint. He then demonstrated how he incurred expenses on repairs and replacement of the lost items.

On cross-examination he claimed he has receipts of expenses incurred and pictures
10 (photos taken when the boats were released), showing the damage occasioned by the weather.

The said receipts were produced and admitted as PEX.1

15 PW2's evidence was generally similar to that of the Plaintiff. The only difference is that he is the one the Plaintiff used to send to purchase some of the items mentioned and he knows the prices.

PW3 is the carpenter who repaired the damaged boats and hence testified in regards to the
20 costs involved and the extent of the damage.

From the evidence on record there is no doubt that the Plaintiff's property was unlawfully impounded. No reason was given, the Plaintiff was not charged with any offence and even on returning the goods no explanation was given.

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I will deal with the issues as agreed.

Issue No.1:

As already stated the Plaintiff's goods of trade were impounded. The evidence of PW1 is clear on this and is corroborated by the evidence of PW2. This issue is resolved in the affirmative.

5 **Issue No.2**

No reasons were given as to why the items were impounded.

No explanations were made and the same were retained by the Defendant's agents for 100 days. This was unlawful. Ref: **Mugabi John Vrs. AG; HCCS 133/2002** cited by the
10 Plaintiff's counsel is relevant on this matter. The act of seizure was accordingly unlawful and is resolved in the Plaintiff's favour.

Issue No.3:

Issue No. 3 is resolved in the affirmative. Section 10 of the Government Proceedings Act
15 is clear on this.

There is no evidence that the Police Officers who were involved were acting on a frolic of their own. They purported to act under the cover of carrying out investigations. (See evidence of PW1 and PW2). They were therefore acting in the course of their duties and
20 hence the Attorney General is liable. Ref: **Christopher Sebuliba Vrs. Attorney General SCCA 640/92.**

Issue No.4:

The Plaintiff adduced receipts of the expenses he incurred he also produced PW3 who
25 confirmed that he carried out repairs on the boats.

The expenses were properly documented.

I am satisfied that the special damages have been proved.

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The claim for loss of income is claimed to have been Shs.126,000,000/- where the Plaintiff claimed the daily income denied from his fish trade per day.

5 On the strength of the case of **Mugabi Vrs. Attorney General (supra)**, I will allow the claim.

Issue No.4:

10 General damages are a presumed direct or probable consequence of the acts complained of. The Plaintiff suffered inconvenience for over 3 months when his property was unlawfully detained.

15 The plaintiff has suggested a sum of Shs.60,000,000/-. However, I take into account that I have already allowed the claim for loss of income. General damages are not meant to be a punishment against the Defendant. Rather, they are an attonment for the inconvenience suffered by the Plaintiff and placing him back in the position he was at before the wrong was done. I accordingly find that General damages of Shs.30,000,000/- are reasonable and I so award the same.

20 In summary, Judgment is entered in favour of the Plaintiff in the following terms:

1. Special Damages assessed at Shs.128,744,400/-.
2. Interest on the above at Court rates from the time of filing to payment in full.
- 25 3. General Damages at shs.30,000,000/-.
4. Costs of this suit.

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Godfrey Namundi

Judge

08/05/2014