

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

CIVIL SUIT NO. 051 OF 2001

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**1. FASTLINE CARRIAGE SERVICES LTD.
2. ISAAC NSEERA :::::::::::::::::::::::::::::::::::PLAINTIFFS**

VERSUS

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**1. CRANE MANAGEMENT SERVICES LTD.
2. FIT PROPERTY
LINKS:::::::::::::::::::::::::::::::::DEFENDANTS**

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BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

JUDGMENT

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The Plaintiffs' claim is that the Defendants unlawfully impounded the Plaintiffs' vehicles and other items and detained the said items. They claim for return or release of the said properties or payment of their equivalent value and costs.

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The properties and their values are listed in the Plaint. The plaintiffs claim they learnt about the defendants' actions on 23/4/2001 in the New Vision newspaper when the 2nd Defendant advertised for the sale of the said properties. The Defendants claimed they had impounded the items for non-payment of rent by one Abdu Balikowa.

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Both Defendants filed statements of defence. The first Defendant claims they are Property Managers for the registered proprietor. The said property was in occupation of Abdu Balikowa who was in rent arrears of shs.16,000,000/=.

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That the said Balikowa is said to have deserted the premises leaving there a number of motor vehicles and other items which were never claimed. The statement of defence for the 2nd Defendant is a repetition of the contents of the 1st Defendant's written statement of defence.

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It only goes further to assert that the plaintiff's losses if any were self-inflicted and voluntarily assumed.

This matter has had a chechered history spanning a period of almost 15
15 years and has gone through the hands of several Judicial Officers. In 2012, 11 years after filing the suit, the Defendants realized they needed to seek indemnity from a third party. They applied and were allowed to issue a third Party Notice against Abdu Balikowa. They claimed Abdu Balikowa was an elusive tenant who failed to pay rent to the 1st Defendant. That on
20 that basis the 1st Defendant impounded the suit properties that were at the garage, resulting into the above suit. The 3rd Party Abdu Balikowa filed a 3rd Party defence denying the Defendants' entitlement to any indemnity, and that he has never been a tenant of the Defendants and hence does not owe them any rent.

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Further that he was never served with a court order authorizing the impounding, attachment and sale of the plaintiff property.

Issues were framed as follows: -

1. Whether the plaintiffs are the owners of the impounded or detained items.
- 5 2. Whether the Defendants were entitled to impound the items of the suit.
3. Remedies available.

The Plaintiffs testified in support of their claim and Abdu Balikowa (3rd
10 Party) also gave evidence. The Defendants did not call any witness although all filed written submissions.

Issue No.1: -

The Plaintiff No. 1 adduced evidence of ownership of a Fuso Engine, a
15 Leyland Bus, a Tata Cabin and also the welding machine. The Exhibits PExh.1 to 8 were tendered to confirm the above.

PW2 - NSERA ISAAC gave evidence in respect of motor vehicle UAA 979
ISUZU FORWARD TRUCK which he had taken to Abdu Balikowa's
20 Garage for repair. He tendered the Job Card as PExh.10 and the Log Book as PExh.11 and Transfer Forms as PExh.12. In cross examination he stated that he had bought the vehicle but had not completed the process of transfer.

25 ABDU BALIKOWA (PW3) acknowledged receipt of the vehicles and other accessories from the Plaintiffs. There was no evidence adduced by the Defendants to rebut the claims of ownership by the Plaintiffs.

Instead Counsel for the 1st Defendant made submissions full of his own suggestions not supported by evidence which amounts to evidence from the bar. He also introduced issues of bailment that was neither in the
5 pleadings nor in the evidence.

He substantially departed from the pleadings thus offending Order 6 Rule 7 of the Civil Procedure Rules. **Reference: Nsubuga Vrs. AG (1993)1 KALR 33 and Baker Bakali Vrs. Rose Wanzala Civil suit 328/07.**

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It is unacceptable for the Defendants to attempt to introduce evidence in their submissions and matters not in the pleadings when they failed to adduce any evidence in their defence. What is on record are the statement of defence and nothing else. The Defendants are bound by
15 their pleadings and cannot depart from them. I hold that the Plaintiffs have proved ownership of the property impounded by the Defendants.

Issue No. 2: -

The 3rd party in his pleadings and evidence stated that he has never been
20 a tenant of the Defendants or that he was in default of rent.

It was submitted that impounding the plaintiffs' items was wrong as they did not belong to Abdu Balikowa. Both Defendants in their statements of defence only claimed that Abdu Balikowa was in default of rent of
25 Shs.16,000,000/=. The said Abdu Balikowa claimed he used to pay rent to another party and only saw the Defendants in 2001 when they came to close the premises.

The Defendants in their statements of defence claim Abdu Balikowa abandoned the premises.

- 5 There was no evidence on the landlord tenancy relationship e.g. Tenancy Agreement. There was no Notice of default neither was there a court order to impound the properties.

The demands by the Plaintiffs to have the items released as per the
10 evidence of PW1 and PW2 fell on deaf ears and the same have never been released since that time – 2001 to date.

It was submitted that the 3rd party adduced no evidence of payment of rent. That the Plaintiffs' relationship with the 3rd party was that of bailee
15 and could exercise a lien over the suit property. That the 3rd Party had a duty to protect the property among others. **Ref: Mbabazi & Co. Ltd Vrs. Uganda Railways Corporation.**

Further that the first Defendant as the agent of the Landlord was entitled
20 to exercise a lien over the abandoned property.

It is the finding of this Court that whatever the case, the Defendants were not justified to impound the property or failure to release it once the Plaintiffs produced evidence of ownership. Further apart from
25 submissions by defence Counsel, there is no evidence of the Tenancy/Landlord relationship between the Defendants and Abdu Balikowa.

Issue No.3: -

The Plaintiffs submit that the only remedy now in the circumstances is the payment of equivalent values for the properties. That on the strength of
5 **Christine Bitareho Vrs. Edward Kakonge – Supreme Court Appeal 4/2000** the victim is entitled to be restored to the same position as he was at the time of detention.

The Plaintiffs told Court the equivalent values at the time of filing
10 unfortunately there was no evidence of the current replacement value of the items. It is now 14 years since this suit was filed and there is no comparison with the values in the Plaint and the current values.

On the authority of **Christine Bitarabeho Vrs. Edward Kakonge SC.**
15 **Appeal 4/2000**, the Plaintiffs would be entitled to being compensated at the value at the time of Judgment. He should be restored to the position he was at the time of detention of the goods. This would enable the Plaintiff to buy the same item at the time of Judgment. The figures indicated in the Plaint – 14 years ago are just indicative and it would be a
20 mockery to uphold those as the replacement value of the detained items.

The submissions by the defence regarding depreciation and loss of value of the items was entirely evidence from the Bar which is unacceptable.

25 In any case the said loss of value of the items was caused by the Defendants own brash acts and intransigence. I find that the Plaintiffs are entitled to the current replacement value of the following items: -

- (a) Tata Lorry **then** valued at Shs.12,000,000/=.
- (b) Welding machine **then** at Shs.1,000,000/=.
- (c) FUSO Engine **then** valued at Shs.6,000,000/=.
- 5 (d) Tata Cabin **then** at Shs.1,500,000/=.
- (e) Leyland Bus which was valued at Shs.8,000,000/= at that time.
- (f) ISUZU FORWARD **then** valued at Shs.7,500,000/=.

To facilitate this, the Registrar of this Court is instructed to appoint a
10 Government Valuer to compute the current replacement value of the
above items and submit his report to this Court within 30 days from this
Judgment.

The findings will then form part of this Judgment as regards the
15 replacement value of the items which the Defendants will be directed to
pay.

Further for all the inconvenience caused to the Plaintiffs as a result of the
Defendants' actions, I award General Damages of Shs.50,000,000/=.

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I also dismiss the 3rd Party claims as they were not proved by evidence
against the said 3rd Party. Costs are awarded to both the Plaintiffs and
the 3rd Party.

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Godfrey Namundi
Judge

13/11/2015

5 13/11/2015:
Ssekidde Simon Peter for Plaintiffs
Defendants and Counsel absent

Court: Judgment delivered.

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Godfrey Namundi

Judge

13/11/2015

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