

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**HOLDEN AT MBALE**

**HCT-04-CV-CS-0024-2002**

**NOAH EMUNYAT.....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL.....DEFENDANT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

The facts as per the plaint (paragraph 4), are that on 13<sup>th</sup> September 2000, the defendant's police officers at Busia Police Station, acting in the scope of their authority, wrongfully seized the plaintiff's motor vehicle a Diana Pick-up No. 925 UBS. The said motor vehicle was wrongfully detained by the defendant's police officers from Jinja Police station who were acting in the course of their

employment within the scope of their authority until on 30<sup>th</sup> April 2001 when the same was released. Plaintiff avers that the seizure and detention of this motor vehicle was highhanded, oppressive and unjustified. He therefore complained of expenses and loss (paragraph 5).

He therefore prayed for;

(a) Special damages of shs. 2,804,000/=.

(b) Loss of earnings of shs. 16,100,000/=.

(c) Interest on damages from judgment and on loss of earnings from filing at 20% per annum till payment in full.

(d) Costs of these proceedings.

The defendant in the written statement of Defence denied all the above and averred in paragraph 6 that in the alternative if the plaintiff's vehicle was seized by the police which is denied, it was lawful as there was reasonable ground to believe that an offence had been committed in respect thereof and was subject of an investigation.

The plaintiff in a bid to prove the case led evidence as follows:

**PW.1 Noah Emunyat** informed court that on 13.09.2000 at 5:00p.m, his turn boy and driver of his motor vehicle No. 295 UBS Diana Pick-up, came and informed

him that police had seized the vehicle at Busia. When he went to Busia to cross check, he found the vehicle parked at the police station. The vehicle was later transferred to Jinja Police station where it was held/impounded allegedly in connection with a criminal case under CRB 410/00 at Jinja. The witness sought assistance from his lawyers- M/s Nangwala and company. These contacted the DPP, and as a result the Resident State Attorney Jinja wrote to the CID and the vehicle was returned to him. He received it back on 30.4.2001.

He then proceeded to have the vehicle serviced, as it wasn't in good mechanical condition. The battery, side mirrors, and other things were missing. He handed in court Exh.1 (letter for handing over the vehicle), Exh.2 (Chit for handing over), Exh. 3 (Invoice for repairs). He showed that the vehicle was impounded for 230 days, he lost 70,000/= per day from 13.9.2000 to 30.4.2001 totaling to 16,100,000/=. That he also incurred expenses while trying to recover the motor vehicle of shs. 2, 349,000/= inclusive of legal fees to his lawyers. He incurred shs. 425,000/= for new battery and other parts including fees for labour for the mechanic. All these were recorded in plaintiff Exp.4.

**PW.2 Emmanuel Ekachelan** was the mechanic. He confirmed to court that when he got motor vehicle 295 UBS Diana he found the battery, 2 side mirrors, tarpaulin and spare tyre missing. The tool box was broken in. They bought a battery at shs.

70,000/=, 2 side mirrors at 30,000/=. He drove the car to Mbale and carried out other repairs. He was paid shs. 45,000/= for hire charges and shs. 310,000/= for other repairs.

**PW.3 Emurut Ceispin** was the turn man on the motor vehicle. He confirmed PW.1's evidence that motor vehicle 295 UBS belonging to PW.1 was impounded by the police at Busia Town and taken to Busia Police Station. He confirmed that though police informed them that the vehicle was involved in a case, they did not reveal the nature of the case to them.

The defendant did not call evidence in rebuttal. However defendant filed submissions in rejoinder to plaintiff's submission.

During the scheduling, three issues were listed for determination. These were:

1. Whether the seizure of the motor vehicle of the plaintiff was lawful.
2. Whether the plaintiff suffered any damages.
3. What was the quantum of damage suffered?

The parties addressed the above issues in the submissions as here below:

**Issue 1: Whether the seizure of the motor vehicle was lawful**

Plaintiff contended after reviewing evidence on record that the documentary evidence and testimonies of PW.1, PW.2 and PW.3, confirm that the defendant's agents unlawfully detained plaintiff's vehicle; and that the detained motor vehicle belonged to plaintiff not defendant.

Defendant on the other hand submitted that according to section 7 of the Criminal Procedure Code, police has power to seize any vehicle suspected to have been involved in the commission of crime. He further argued that in any claim for trespass and unlawful seizure, the plaintiff must prove lawful ownership of the property upon which trespass is alleged.

He argued that the vehicle was seized for being involved in the crime committed in Jinja. This was communicated to the plaintiff and therefore rendered the seizure by police lawful.

The facts as reviewed by both parties are true. The only problem that arose was that police impounded the vehicle and kept it in its confines for the period, when plaintiff alleged it was later handed over. The law as quoted under section 7 of the CPC is to the effect that police has the authority to stop and impound a vehicle suspected of involvement in any crime.

This is exactly what appears to have moved police to impound the vehicle. The rules of natural justice however require that where such action is taken inquiries be completed as soon as possible and the property impounded be released back to its owner. That is at least the spirit of the law under Articles 26, 27, and 28 of the Constitution. The spirit of those Articles is that where such an issue is in consideration, fairness, and speed are brought into consideration. The police had a duty to act expeditiously and release the vehicle. However, the evidence shows that it took the intervention of the DPP, after lawyers complained to him, then the vehicle was released.

In the case of *John Mubiru v. A.G. (1984) HCB 46*, Court was considering whether the plaintiff who had been lawfully arrested by police, could recover damages for being detained for an inordinately long period without being taken to court, court held that:

*“While the arrest was lawful, the detention of the plaintiff for over 16 months without being taken to court and charged and failure of the police to complete investigations of the allegations against him while those of his colleagues were completed rendered his detention unlawful. Defendant was liable to pay the plaintiff damages for unlawful detention. That*

*the continued detention of the plaintiff was callous and inexcusable and this was right case for awarding exemplary damages.”*

The above case although was in regard to the detention of a person, is closely similar to this case where plaintiff’s property was detained for a long period, yet the alleged crime was never disclosed to the plaintiff, to warrant the lengthy period during which the vehicle was impounded. The arguments by defendant regarding Title are not supported by evidence. Title was not in issue. What was in issue was whether the “impounding” was unlawful or not.

I find that though impounding was lawful, the over detention of the vehicle was unlawful. The issue is found as above.

**Issue 2: Whether plaintiff suffered any damages.**

The common law principle is that trespass is actionable perse. According to **Glanville William: BA Hepple; *Foundations of the Law of Tort 2<sup>nd</sup> Edn* pg. 57.**

*“The primary principle is that a plaintiff in tort must prove damage, because the object of the law is to prevent and redress*

*harm, and if there has been no harm there is no complaint. But in some torts the plaintiff is given nominal damages in recognition of the fact that his legal rights have been invaded, though he has not suffered in the least.”*

The evidence on record shows that the delay to release the vehicle resulted into loss of earnings by plaintiff who was supposed to use the vehicle to transport produce. The evidence through PW.1, PW.2 and PW.3 further shows that there were repairs done and items bought as per exhibits PE.3 and PE.4. All these losses and expenditure could not have happened if the police had not impounded the vehicle and kept it for the period stated.

I am therefore not in agreement with defence submissions that plaintiff did not prove damage since he had not produced evidence of ownership of the car, or an agreement of purchase. This case did not require proof of ownership of the car, as it was not in issue among agreed issues. It was not necessary for plaintiff to move out of his pleadings to prove what was not in issue. Evidence clearly establishes through PE.1, PE. (letter handing over the vehicle to plaintiff by police). PE.2 (Chit for handing over vehicle and PE.3 (Invoice) that plaintiff was in possession



of the car as owner/user thereof. The issue of Title was never raised in pleadings and cannot be raised at this stage.

The evidence of PW.1, PW.2, PW.3, Exp.1, Exp.2, Exp.3, Exp.4 all shows that plaintiff's use of the motor vehicle was interfered with by the defendant, where after plaintiff suffered damage. The issue is found in the affirmative.

### **Issue 3: What was the quantum of damages suffered?**

The assessment of damages as rightly argued by the plaintiff has been the subject of judicial pronouncements in a number of cases. While general damages are in the discretion of the court, special damages must be proved specifically. This court will follow the earlier cases of Mugenzi v. Attorney General HCB 64, Senyakazana v. Attorney General HCB 48, John Mubiru v. Attorney General & Or (1984) HCB 46, Kwarankundo v. Attorney General (1984) 60, to consider and award the plaintiff the following remedies basing on Exh.3 and Exh.4, and evidence through PW.1, PW.2 and PW.3 detailing loss as follows:-

1. Since act complained of arose out of a lawful impounding of the vehicle by police, but injury arose as a result of undue delay to have it released, court allows nominal damages of shs. 500,000/= (five hundred thousands only).

2. Plaintiff prays for shs. 2, 804,000/= as special damages and shs. 16,100,000/= as lost earnings. Special damages must be specifically proved. According to evidence on record, the following damages were proved as per evidence of PW.1, PW.2, PW.3 and Exp.3 and Exp.4. PW.1 said he lost 7,000/= per day for 230 days from 13.09.2000 to 40.04.2001. This according to him makes shs. 16,100,000/= and on top of that he shows by the contents of Ext. P.4 that all his detailed expenses amounted to 2, 499,000/=.

From the pleadings and evidence I find that the plaintiff has proved special damages of shs. 2, 499,000/=. Plaintiff has also proved loss of shs. 16,100,000/= as lost earnings.

The above are the proved damages by the plaintiff and I do find the issue for plaintiff in the above terms.

In the final analysis plaintiff has proved the case against defendants on a balance of probabilities. Costs granted to the plaintiff. I so order.

**Henry I. Kawesa**

**JUDGE**

**24.4.2015**