

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL SUIT NO. 211 OF 2008

KAYONZA DISTRIBUTORS ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

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

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

The plaintiff Kayonza Distributors Limited represented by M/s Ntambirweki Kandebe & Co. Advocates brought this action against the Attorney General through the principle of vicarious liability seeking for special damages of 302,207,500/-, general and aggravated damages as well as costs of the suit. The plaintiff also claimed for interest on the special damages at the rate of 28% per annum from 10th April 2007 until payment in full and interest at court rate on the general and aggravated damages at court rate from the date of judgment until payment in full.

The brief background of this suit is as follows:

On or about 20th day of January 2006, the plaintiff entered into a vehicle lease agreement with Stanbic Bank (U) Limited for a period of 30 months wherein Stanbic Bank (U) Limited leased to the plaintiff company motor vehicle registration No.UAG/029Y a Scania Model 113M as indicated in exhibit P1. The plaintiff took possession of the motor vehicle under the lease agreement so as to make money that would meet the monthly payment installments agreed upon. As part of the plaintiff's transport business, the plaintiff entered into a transport agreement with Hima Cement Limited for transport services and deployed the said motor vehicle to carry out

those services. The agreement with Hima Cement Limited was tendered and marked as Exhibit 'P4'.

On 10th April 2007, the Motor Vehicle Scania Head Reg. No. UAG/029Y while on one of the Hima Cement surjons, was impounded in Koboko by the Uganda Police Officers in the course of their employment and was driven to Kampala abandoning the trailer in Koboko. The police claimed that the vehicle had been stolen and there was a case against it (*sic*). That in case of any complaint, it would be raised with the DPP's office who had the case file. The last information received by the plaintiffs was that the motor vehicle had been given to a third party who had taken it to Kenya. The plaintiff wrote to the DPP complaining about the taking of the vehicle without following due process as per exhibit 'P5'. The reply to exhibit 'P5' was four months later saying the DPP had not directed the handover or release of motor vehicle as inquires on ownership and possible forgeries were still ongoing as per exhibit 'P6'. The suit vehicle has never been seen by the plaintiff.

According to the plaintiff, as a result of the wrongful and unjustified grabbing of their motor vehicle, the plaintiff lost the truck itself and business particularly the contract between the plaintiff company and Hima Cement Limited where the company was earning 12,000,000/- per month. The plaintiff reveals that even when the motor vehicle was taken by police the plaintiff continued paying monthly rentals to Stanbic Bank as per agreement amounting to 49,137,050/- the price for the motor vehicle taken.

At the hearing of this suit, the defendant from the onset stated that liability for the actions of the defendant's agents is not disputed and the defendant only sought for formal proof of damages claimed by the plaintiff and trying to mitigate the quantum.

With this development, the only issue for determination by this court is the amount of damages to be awarded under the different heads as claimed by the plaintiff.

(i) **Special Damages:**

Halsbury's laws of England Vol. 12, 4th edition paragraph 1202 defines damages to mean-

“the pecuniary re-compensation given by the process of law to a person for the actionable wrong that has been done to him (her).”

Special damages must be specifically pleaded and strictly proved. In the case of **Shell (U) Ltd Vs Achillis Mukiibi CA No. 69 of 2004 CA** it was held *inter alia* that:

“.....plaintiff must understand that if they bring an action for damages it is for them to prove their damages. It is not enough to write down the particulars and so to speak throw them at the head of the court saying, this is what I have lost. I ask you to give these damages. They have to prove it”.

Therefore as rightly submitted by Ms. Ijang learned counsel for the defendant, special damages are restrictive and do not deal with estimates but rather with exact final losses that must be quantified. In the book of **McGregor on damages 15th edition paragraph 1758A**, the author states thus:

“Where the precise amount of a particular item of the damage has become clear before the trial, either because it has already occurred or so become crystallized or because it can be measured with complete accuracy, this exact loss must be pleaded as special damages”.

With these clear principles in mind and basing myself on the evidence on record, the plaintiff has proved on a balance of probabilities that the actual price of the lost vehicle Scania Tractor Head was UGX 49,103,750/-.

The validity of the agreement with Stanbic Bank (U) Ltd was confirmed by PW1 who confirmed that he continued to make payments and concluded payments for the truck as per the agreement signed with the Bank. Since the defence did not oppose the prayer for 49,103,750/-, the price of the lost motor vehicle, this amount will be awarded to the plaintiff as special damages instead of 98, 207,500/ since it is an amount measured with complete accuracy.

(ii) The plaintiff made a claim of loss of income arising out of the contract with Hima Cement Limited, had it been renewed. It made a claim of 1, 358, 207,500/- allegedly arising out of the contract signed between the plaintiff and Hima Cement Limited worth 12,000,000/- per month. This claim was calculated on the basis of 85 months from the time the vehicle was impounded to date multiplied by the value of the contract per month. The plaintiff adduced as evidence to support his claim a contract signed between the plaintiff and Hima Cement Limited for the provision of transport services for transport of Hima Cement Limited products from Kasese to Kampala. The contract which was signed on 7th June 2004 for duration of 3 years was to expire on 31st May 2006. By the time the motor vehicle was impounded by the defendant's agents on 10th April 2007, the date on which the cause of action arose, the contract between the plaintiff and Hima Cement Limited had only seven weeks before its expiration.

On this claim, I agree with learned counsel for the defendant that this claim is unsustainable as it has not been proved. The contract upon which this claim is based was for a fixed period of three years and at the time of the cause of action, it had a validity period of seven weeks remaining. The assertion that the contract was to be renewed is merely speculative as there are so many variables that would have resulted in the contract being terminated at any stage and/or not being renewed by either of the contracting parties.

The plaintiff's claim is merely an estimate for prospect loss. An estimate for prospective loss must be based on solid facts to guard it against becoming a mere guess.

As rightly submitted by Ms. Ijang, the claim for this loss is speculative and riddled with uncertainties. To claim that the contract would have been certainly renewed and its terms upheld in the years following the loss of the vehicle is a mere guess which cannot be a basis for this claim.

The only loss of income this court can consider for special damages is for seven weeks during which the contract was in subsistence. In the plaintiff's evidence, he testified that the vehicle used to earn 12 million shillings per month while transporting Hima Cement Products. The rate which is indicated in the contract was UGX 49,000/- per metric tonne.

Given that the plaintiff's vehicle is a trailer the claim that it used to earn 12,000,000/= per month is not unreasonable. In any case, it was not challenged in cross examination. I will therefore award 24,000,000/- as special damages for loss of income for the seven weeks that were remaining to the end of the contract.

(iii) General damages:

The legal principles for the grant of general damages is that they are compensatory in nature for the loss suffered and the inconvenience caused to the aggrieved party so that he/she is put back in the same position as he/she would have been in. General damages are not intended to better the position of the claimant. They are within the discretion of the court to award.

In the instant case the actions of the defendant disorganized the plaintiff's business. It led to loss of income and hindered the growth of his business venture. You never know his contract with

Hima Cement would have been renewed. The plaintiff suffered loss and inconvenience throughout that period.

In the case of ***Fredrick Zaabwe Vs Orient Bank Ltd SCCA No. 4 of 2007*** where the respondent had wrongly grabbed the appellant's house which was his home and office, the Supreme Court found that the Mortgaging and the purported sale of the appellants home was unjustifiable, illegal and oppressive. It awarded the appellant 200,000,000/= as general damages. In the instant case, the state police for no good reason grabbed the plaintiff's motor vehicle which was its source of income. It lost the contract with Hima Cement Limited since the vehicle was no longer there. In the circumstances of this case, the figure of 40,000,000/= proposed by the defendant is unreasonable and therefore unrealistic. I will accordingly award 250,000,000/= shillings prayed for as general damages as reasonable in the circumstances.

(iv) Aggravated damages:

According to the defendant, the circumstances of this case do not warrant an award of aggravated damages. That whereas the defendant's agents may have erroneously released the plaintiff's vehicle to the 3rd party, the defendant readily accepted liability. Much as the defendant readily admitted liability I take exception of the actions of its agents who for no good reason grabbed the plaintiff's motor vehicle and without clear explanation or court order released it to a 3rd party. This was reckless and unconstitutional and was done in total breach of all existing laws. The state must be punished by an award of aggravated damages as a deterrent. I will award 300.000.000/= as aggravated damages.

(v) Interest:

The guiding principle in awarding interest is that it is at the discretion of court. The discretion however must be exercised judiciously taking into account the circumstances of each case. According to Ms. Ijang, learned State Attorney for the Attorney General, the rate of 28% claimed by the plaintiff is unconscionable. That interest is not awarded to enrich the plaintiff but rather on the principle that the successful litigant has been kept away from his money, (in this case his vehicle) which he would have put to use. She suggested an award of interest at court rate of 6%. These principles are proper considerations when court is awarding interest. I agree that an award

of interest at the rate of 28% on each award is on a higher side. Consequently I will award an interest of 20% per annum on special damages from 17th September 2008 until payment in full and an interest of 10% on aggravated damages from the time of judgment until payment in full. I will also award interest of 14% on general damages from the time of judgment until payment in full.

In summary judgment is entered for the plaintiff as follows:

- (i) Award of 49,103,750/= value of the lost vehicle as special damages.
- (ii) UGX 28,000,000/= special damages for loss of income.
- (iii) UGX 250,000,000/= general damages.
- (iv) UGX 300,000,000/= aggravated damages.

All the awards to carry interest as stipulated herein. The plaintiff shall also get the costs of this suit. I so order.

Stephen Musota

J U D G E

25.01.2016.