

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

CIVIL SUIT NO. 143 OF 2015

BESIMIRA MOSES.....PLAINTIFF

VERSUS

THE ATTORNEY GENERALDEFENDANT

BEFORE:HON JUSTICE SSEKAANA MUSA

JUDGMENT

On the 8th day of September 2011, the plaintiff reported a case of a missing motor vehicle registration no. UAK 5585, Mitsubishi Fuso at Central Police Station Kampala (CPS) vide reference no. 34/08/09/2011. After a couple of days, the motor vehicle was found and impounded at Central Police Station-Kampala. The plaintiff has since 2011 been trying to recover his motor vehicle from police in vain. He has approached several police offices and written several letters requesting for release of this motor vehicle but he has not been helped. And at the time the motor vehicle was impounded, it was in good and sound condition but has now become a mere sham and in bad state under police custody at CID Headquarters Kibuli.

The issues that were raised for determination are;

1. Whether the plaintiff is the owner of motor vehicle registration no. UAK 588G?
2. Whether motor vehicle registration no. UAK 588G is held illegally or custody of Uganda Police?

3. What remedies are available to the parties?

The plaintiff was represented by *Ms. Sheila Birungi* and the defendant *Ms Charity Nabaasa (State Attorney)*

Counsel for the plaintiff submitted that it is un-contradicted evidence of his client that by an agreement dated 17/08/2009, the plaintiff bought from DFCU Bank Limited, motor vehicle registration no. UAK 588G, Mitsubishi Fuso at a consideration of UGX. 95,000,000/= (Ninety five million shillings only) through the Bank's agent M/S Armstrong Auctioneers

She further noted that the plaintiff had not yet transferred the log book for the motor vehicle in his name at the time of this suit. However DFCU bank had authorized the change of ownership of the said motor vehicle from its name into the plaintiff's name and went ahead to pay the transfer of ownership fees.

Counsel submitted that the paragraphs 7, 8,9,10 and 11 of the witness statement state the details of how the motor vehicle was first impounded at CPS and later transferred to CID Headquarters Kibuli where it still is to date. The plaintiff through letters made several requests and appeals to release his motor vehicle in vain. The defendant neither denied custody of this motor vehicle nor receipt of the letters

Counsel also submitted under paragraphs 2, 3, and 4 of the witness statement stated that he together with plaintiff in 2013 went to CID headquarters Kibuli where the truck was impounded he inspected and carried out several observations which helped him value the truck. This was not rebutted by the defendants

He further submitted that the defendant did not adduce any evidence in regards to the issues raised, highlighting the case of **AKPM Lutaaya v. AG Court of Appeal Civil Appeal No.2 of 2005** where the evidence of independent valuers was challenged by the respondent but not rebutted, court used the said valuation in determining the plaintiff's losses. As per the facts before us, the plaintiff prayed that the defendant purchases a new motor vehicle with similar capacity as the said motor vehicle in the alternative.

Counsel submitted that the objective of damages is to put the injured person back to the position where he/or she was before the injury. Lord Blackburn in **Livingstone v. Ronoyards coal Co. (1880) APP CAS 259** defined the measure of damages as; "that the sum of money which will put the party who has been injured who has suffered. Thus the plaintiff be awarded special damages as;

- i) UGX. 9,000,000/= (Nine Million shillings) being repairs of done on the suit truck
- ii) UGX. 2,000,000/= (Two Million shillings) being the security deposit made by the plaintiff in the agreement with coffee traders
- iii) UGX. 761,600,000/= (Seven Hundred Million Six Hundred Thousand shillings) being revenue lost from failure to execute the terms of the agreement with coffee traders
- iv) UGX. 5,000,000/= (Five Million Shillings) being security deposit made by the plaintiff in the agreement with Sige Enterprises.

Total of special damages amounting to UGX. 777,600,000/= (Seven Hundred Seventy Seven Six Hundred Thousand Shillings)

Counsel submitted that general damages include anticipated future loss as well as damages for pain and suffering and loss of amenity. In the case of **Acire v. May Ann Engom [1992] IV KALR 143** Court held that in awarding general damages, regard has to be had to loss and injury the defendant and all other circumstances of the case, as stands in the facts of the contract of Sige enterprises and the plaintiff thus the need to pray for UGX 500,000,000/= (Five Hundred Million Shillings)

Counsel submitted that in the case of **URA v. Wanume David Kitamirike Civil Appeal No. 43 of 2010**, stated that punitive damages focus on the defendant's misconduct and not injury suffered. They are in the nature of a fine to appease the victim and discourage revenge and warn societies and also court's sense of decency. It is therefore right and justified to subject the defendant to punitive damages of UGX 100,000,000 for the unjustified and malicious acts of his employee the Uganda police. Counsel for the applicant submitted that exemplary damages according to Lord Devlin in **Rookes v. Bernard [1964] AC 1129**, stated that in his view there are only 3 categories of cases in which exemplary damages are awarded namely;

- i) Where there has been oppressive, arbitrary or unconstitutional action by the servants of the government
- ii) Where the defendants conduct has been calculated by him to make a profit which may well exceed the compensation payable
- iii) Where some law for the time being in force authorized the award of exemplary damages

Counsel thus prayed for UGX. 50,000,000/= (Fifty Million Shillings) that the acts of the police were not only unconstitutional but extremely oppressive and arbitrary. Court

should also consider interest on special damages, and general damages from the date of impounding the vehicle until payment in full, cost of the suit and any other relief that this court may deem fit

Counsel for the defendant submitted that the plaintiff in his submissions claims that DFCU Bank gave authorization to change of ownership of the vehicle however the same was never done.

Counsel cited Section 7 of the Criminal Procedure Code Act, Sections 26, 29 of the Police Act and the Section 103 of the Evidence Act, highlighting the case of **Jovelyn Barugahare v. Attorney General SC.C.A No. 28 of 1993**. Submitting that the commandant Metropolitan Police had ordered investigations leading to the impounding of the said motor vehicle however it is note stated that police impounded this vehicle and the evidence adduced by the plaintiff is not sufficient to show that this vehicle was impounded. Relying on pictures and own letters addresses to police is not sufficient evidence.

Counsel submitted that the plaintiff sought the following reliefs; general damages, exemplary damages, special damages interests and costs of the suit. As regards to special damages not only must they be specifically pleaded but they must also be strictly proved citing the case of **Borham Carter v. Hyde Park Hotel [1948] 64 TLR** and others. The plaintiff's claim of purchase of the said truck and considering the wear and tear since two years had lapsed is high.

Counsel cited the case of **Oketcha Dafala Valnte v. The Attorney General of Uganda, Civil Suit No.0069 of 2004**, Justice Stephen Mubiru stated at page 5 "*in the*

instant case there is a total lack of contemporaneous records of the income generated over the period before the vehicle was impounded, records of running or operational expenses incurred, receipts for licenses paid for, etc. by which the averment on the daily net income can be verified. As was noted by Platt, J.S.C, in Kibimba Rice Co. Ltd v. Umar Salim S.C. Civil Appeal No. 7 of 1988, "it is not true to say that daily income can never be proved. Accounts of receipts against outgoings can be proved to arrive at a net figure. If no accounts were kept, then a claim in general damages should be considered, although pleaded, the evidence adduced by the plaintiff does not meet the requirement of strict proof. That claim for special damages is consequently rejected."

Counsel submitted that where general damages have been prayed for, courts should address its mind to the case of **Oketcha Dafala Valnte v. The Attorney General of Uganda (supra)** where court held that *"as regards the claim for general damages, without proof of actual loss or damage, courts usually award nominal damages. Damages are said to be "at large," that is to say the court, taking all the relevant circumstances into account, will reach an intuitive assessment of the loss which it considers the plaintiff has sustained. The award of general damages is in the discretion of court in respect of what the law presumes to be the natural probable consequence of the defendant's act or omission to be natural and probable consequence of the defendant's act or omission."* The defendant also submitted that if court is inclined to award general damages an award of UGX. 5,000,000/= (Five million shillings) would be fair and adequate.

Counsel submitted that the plaintiff request of UGX. 100,000,000/= and UGX. 50,000,000/= respectively of exemplary and punitive damages is unfair to the

defendants. Counsel relied on the case of **WSO Davies v. Mohanlal Karamshi Shah [1957] 1 EA 352** court noted that these represent a sum of money of a penal nature in addition to the compensatory damages given for pecuniary loss and mental suffering. They are deterrent in nature and aimed at curbing the repeat of the offending act. They are given entirely without reference to any proved actual loss suffered by the plaintiff.

She further cited the case of **Kanji Naran Patel v. Noor Essa and another [1965] 1 EA 484**, if the trespass is accompanied by the aggravating circumstances, the plaintiff may be awarded exemplary damages. Apart from cases in which exemplary damages are expressly authorized by statute, exemplary damages should only be awarded in two categories of cases; cases in which the wrong complained of was an oppressive, arbitrary or unconstitutional action by a servant of the government or cases in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation made to the defendant.

While concluding his submission counsel told court that the plaintiff has not adduced sufficient evidence to show that the evidence was in police custody and to award punitive and exemplary damages would be unfair to the defendants in the above circumstances. He further prayed against the award of interests and costs of the suit.

Analysis

The plaintiff in his submissions prayed for recovery of the current value of the motor vehicle at a cost of UGX. 350,000,000/=, special damages, general damages, exemplary damages, costs of the suit and interest accumulated from the date of filing the suit

The applicant furnished court with an agreement (PE-1) dated 17/08/2009 and PE-7 as proof of ownership of the said motor vehicle. He further submitted letters contained in PE-2 as requests and appeals to release the said motor vehicle in vain, however on the 03 March 2013 a response from the commandant metropolitan police Kampala had ordered investigations on why the motor vehicle was impounded and failure to find any the vehicle be released to the owner, the order was not abided to.

In Consideration of section 103, the plaintiff embraced the words of the section when he took on the burden to prove his ownership of the vehicle and the motor vehicle impounded by the police at police parking yard Kibuli. Having decided this in the affirmative, the plaintiff is thus entitled to the awards prayed for however the figures in the awards shall be revised.

The plaintiff proved that his motor vehicle was impounded under his own complaint of stolen vehicle and the police upon executing their duty refused without any reason to have the motor vehicle handed back to the plaintiff. The actions of Uganda Police are deplorable and to that extent an abuse of authority.

It is the finding of this court that the plaintiff owns the motor vehicle impounded by police UAK 588G since 2011. The said Vehicle is in illegal custody of Uganda Police who refused to have the same released to the plaintiff for no justifiable reason.

What remedies are available?

The plaintiff sought to recover the current market value of the motor vehicle and PW2 estimated the value to be 120,000,000/= in 2013 and currently the value of a similar truck is estimated to be in in range of 350,000,000/= as the plaintiff contended.

It should be noted that the plaintiff's vehicle was a second motor vehicle whose value cannot be changed to a brand new motor vehicle as he quoted from Spear Motors. He cannot seek to recover a brand new car which he has never owned. The value of 350,000,000/= from Spear Motors is totally misleading or intended to mislead court.

This court awards the plaintiff a sum of 110,000,000/= as the fair value of the Motor Vehicle since he had used the impounded motor vehicle for over three years.

Special damages

As submitted by counsel that it is trite law that special damages must not only be specifically pleaded but they must also be proved (**see Borham Carter v. Hyde Park Hotel [1948] 64 TLR**)

The plaintiff pleaded special damages of 22,060,000/= in the plaint but at the trial he attempted to lead evidence of loss of income/earnings and that he was seeking lost and prospective earnings. In his submissions he has sought a sum of 761, 600,000/= as special damages as his lost income/earnings. He incurred expenses on repairs done on the suit truck, security deposit in an agreement with coffee traders, revenue lost from failure to execute the terms of the agreement with coffee traders, and security deposit made by the plaintiff in the agreement with sige enterprises. (PE-8)

The plaintiff is trying to recover money he never pleaded as special damages and that is a departure from his pleadings. Secondly, the plaintiff's claim for lost income or prospective future earnings cannot be special damages since they are merely anticipatory damages. The same cannot be awarded as special damages. The only

claim pleaded as special damages cannot be given since the court has given the plaintiff the value of his entire motor vehicle truck.

The claim for special damages of 761,600,000/= fails.

General damages

It was submitted that the plaintiff's motor vehicle was wrongly impounded in 2011 to date. There is no justification that has been given for having impounded the truck. He made several requests and appeals to the police to release his truck which pleas were ignored. To date, the truck is still in the custody of the police vandalized beyond repair and recognition (see PE-6) and an agreement with Sige enterprises frustrated. He further notes that this matter has been in court since 2015. Five years down the road, the plaintiff is still incurring financial loss yet the legal services offered to the plaintiff are not probono. Counsel prayed for an award of UGX 500,000,000/= as general damages with interest there on.

In the case of **Luzinda v. Ssekamatte & 3 Ors (Civil suit -2017/366 [2020] UGHCCD 20 (13 March 2020)**, this court held that as far as damages are concerned, it is trite law that general damages be awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant's actions.

I find that the plaintiff has discharged his duty to prove damages and inconvenience caused as a result of the defendant's actions.

The plaintiff is awarded UGX 100,000,000/= as general damages.

Exemplary/punitive damages

Counsel submitted that punitive/exemplary damages are awarded to deter the respondents from doing such acts on other public officers (**see Dorothy Tuma v. Elizabeth Muller & Anor C.S No. 229 of 2011**). He stated that the motor vehicle was impounded, vandalized beyond repair, such acts forced the plaintiff to think that the police had ulterior motives in impounding his motor vehicle failure of which they opted to vandalize it beyond repair (PE-6). The acts of the police were not only unconstitutional but extremely oppressive and arbitrary. He therefore prayed for UGX. 150,000,000/= in total as exemplary/punitive damages.

As cited in the case of **Luzinda v. Ssekamatte & 3 Ors (Supra)** stated that the rationale behind the award of exemplary damages: exemplary damages should not be used to enrich the plaintiff, but to punish the defendant and deter him from repeating similar conduct.

I further noted that an award of exemplary damages should not be excessive. The punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings, if the conduct were criminal per **Spry V.P. in Obongo v. Municipal Council of Kisumu [1971] EA 91**. All circumstances of the case must be taken into account, including the behavior of the plaintiff and whether the defendant had been provoked. See **O'Connor v. Hewston [1979] Crim. LR 46 CA; Archer Brown [1985] QB 401**

Bearing those principles in mind I find that an award of UGX 15,000,000/= is sufficient as exemplary/punitive damages.

Interest

Section 26 provides for an award of interest that is just and reasonable. In the case of ***Kakubhai Mohanlal vs Warid Telecom Uganda HCCS No. 224 of 2011***, Court held that;

“ A just and reasonable interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”

The plaintiff is awarded interest at a rate of 15% from the date of filing the suit until payment in full of the said value of the motor vehicle of 110,000,000/= and interest shall be 15% on the general and exemplary/punitive damages from date of judgment until payment in full.

The plaintiff is awarded costs of the suit.

I so order.

SSEKAANA MUSA
JUDGE
24th June 2021