

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

CIVIL SUIT N0.367 OF 2019

VICTORIA CANDLES LTD ::: PLAINTIFF

VERSUS

- 1. ATTORNEY GENERAL**
- 2. THE INSPECTOR GENERAL OF POLICE**
- 3. TWARUHUKWA ERASMUS**
- 4. KAFEERO MOSES ::: DEFENDANTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff filed this suit seeking for special, general and aggravated damages arising from trespass, illegal eviction and conversion of the plaintiff's goods by the Uganda police headed by the 2nd and 3rd defendant and commanded during the exercise whose actions the 1st defendant is vicariously liable, interest and costs of the suit.

The plaintiff alleges that as a duly licensed investor, it rented premises from Inalu Trading Company Limited comprised in LRV 1415 Folio 1, Kyadondo Block 244 and Plot 3793 land at Muyenga. The plaintiff immediately took over possession and was using the premises as an assembling site and ware house for all its industrial machinery and its head office. In October, 2018, the police under the command and instructions of the 2nd and 3rd defendants invaded the plaintiff's

premises without any court order whatsoever and forcefully evicted, confiscated, dismantled and vandalized the plaintiff's property and machinery thereby causing loss of business investment prospects, economic and financial loss for which the 1st defendant is vicariously liable for hence this suit.

The defendants filed their written statement of defence wherein they denied the plaintiff's claim and contended that on the 23rd of March, 2017, Ambassador Zaddock Syong'oh Madiri reported a case at Kabalagala police station for criminal trespass on LRV 1351 Folio 1, Kyaddondo Block 244 Plot 3793 land at Muyenga Tank Hill on behalf of M/s Market Support Services Ltd where he is a director.

The police visited the said land and found a one Kamulegeya Adam and other directors of M/s Marketing Support Services. It carried out investigations on the authenticity of both titles in respect of the suit land and established that Adam Kamulegeya of M/s Marketing Support Services was in possession of a forged certificate of title. The defendants contended that Adam Kamulegeya was sanctioned and charged with uttering a false document under the Penal Code Act, impersonation, forgery and criminal trespass at the Chief Magistrates Court of Makindye.

It further contended that in 2017, Inalu Trading Company claimed ownership of the suit land and rented it out to the plaintiff and thereby filed a suit against Syongoh Zaddock Madiri and Market Support Services. The defendants contended that the plaintiff did not do due diligence in ascertaining the true ownership of the suit land. They further contended that the Inspector General of

Police received a letter from the High Commission of Kenya complaining about the fraudulent claim over the suit land. The defendants also contended that the plaintiff had never been in possession of the suit land

The plaintiff was represented by Mr. Kalule Ahmed Mukasa, Mr Mubangizi Absolom and Paul Kalondo whereas the defendants were represented by Mr. Ojambo Bichachi (State Attorney).

The parties filed a joint scheduling memorandum wherein they proposed the following issues for determination by this court.

- 1. Whether the defendants unlawfully evicted that plaintiff company from the premises at Muyenga.*
- 2. Whether the actions of the Defendants amount to trespass.*
- 3. Whether there was any conversion of the plaintiffs' goods by the defendants.*
- 4. Whether the plaintiff suffered any damage or loss and if so, whether the defendants are liable of the said loss.*
- 5. Whether the plaintiff is entitled to any remedies prayed for.*

Order 15, Rule 5 of the Civil Procedure Rules SI.71-1 gives this court the power to amend and strike out issues at any time before passing a decree as it thinks fit as may be necessary for determining the matters in controversy between the parties. In the interest of adequate discussion of the legal issues at hand, the court rephrases the issues for determination to reflect as;

- 1. Whether the defendants' action amount to trespass of the plaintiff's property.*

2. What remedies are available to the plaintiff.

The parties were ordered to file written submissions. Both the parties' submissions were considered by this court to determine the issue raised.

DETERMINATION OF ISSUES

Whether the defendants' actions amount to trespass of the plaintiff's property.

Counsel for the plaintiff submitted that the defendants' actions in evicting the plaintiff from the premises were unlawful. He stated that the defendants alleged that there were helping a rightful owner to enter his land but however, raised questions of fraud on the part of the other party claiming interest. Counsel submitted that the courts have held that allegations of fraud are serious and merit adjudication through trial and consideration of evidence. He noted that the proof of fraud is usually above the balance of probabilities.

It was submitted that the defendants drew conclusions from their own investigations and paid little or no attention to other claimants who had not been tried by the time of eviction and purported to determine the competing rights interests of the parties in the land.

Counsel further submitted that the defendants had no justification to evict the plaintiff and confiscate its properties without a court order but upon their investigations and report. The police derive their powers to enter upon private premises from section 3 and 6 of the Criminal Procedure Code Act and section 26 and 27 of the Police Act which provisions permit a police office to enter any premises for purposes of conducting a search or arrest a suspect without warrant. These powers however do not extend to causing an eviction including

conversion or detinue of the properties at the premises unless the assets are taken as exhibits.

Counsel relied on the testimony of PW1; Mr. Oplolot Emmanuel who testified that the police officers raided the plaintiff's premises; confiscated and carried away the plaintiff's machinery which evidence was corroborated by PW2 and PW3. He stated that the defendants did not adduce any evidence to controvert the plaintiff's evidence. He therefore prayed that court finds that the plaintiff was evicted from the premises by the policemen in the course of their duty and under the command and strict instructions of the defendants.

Counsel while relying on the case of Justine E.M.N. Lutaaya vs Stirling Civil Engineering Ltd SCCA No. 11 of 2002, submitted that trespass to land occurs when there is unjustified interference with the possession of land. He stated that the plaintiff needs to prove that it had possession of the premises, its possession was interfered with and the defendants' interference was unjustified. The fact that the plaintiff was in possession of the premises at the time of the eviction should not be a matter of disputed as testified by PW3.

The agents and/ or employees of the defendants entered upon the suit premises sometime in October with no court order making its actions without justification unlawful.

Defendant's Counsel submitted that the defendants did not participated in the alleged eviction and all the plaintiff's witnesses failed to identify a single agent of the government as having participated in the eviction. Counsel submitted that

PW1, PW2 and PW3 were not at the scene of eviction and all evidence adduced is hearsay.

Counsel submitted that the police officers having not participated in the eviction of the plaintiff and with no evidence pointing to the same, the plaintiff has failed to prove that indeed, the defendants or their agents participated in the eviction. Counsel stated that the deployment at the scene was only to witness the eviction and keep law and order as provided for under section 4 (1) of the Police Act and section 24 of the Criminal Procedure Code Act.

It was submitted that for the plaintiff to sustain the action of trespass, it must prove that the defendant without lawful permission entered and remained upon the land; it was in actual physical possession, the defendant did not have any right to enter into the plaintiff's land and the entry occasioned the plaintiff damage.

Counsel thereby submitted that the officers cannot be accused of trespass because they may with or without warrant enters into the premises where he or she reasonably suspects that an unlawful activity is taking place under section 21 of the Police Act. He stated that the deployment of the police officers at the scene was only to witness that eviction and keep law and order and thus in execution of their lawful duty and mandate do not need permission of the plaintiff to enter any premises in carrying out investigation, preventing crime and protecting property. He also stated that the police did not remain on the premises.

Counsel further submitted that the police shall not just watch on and wait for a court order and condone trespass as one's property is being encroached on as

this will amount to the police abandoning its core duty of preventing crime, detecting crime, protecting life and property as required under section 4 and 27 of the Police Act. He therefore submitted that there was no trespass on the plaintiff's premises.

Analysis

An action for trespass to land occurs when the person directly enters upon another's land without permission and remains upon the land, places or projects any object upon the land. (*See; Salmond and Heuston on the Law of Torts, 19th Edition, Justine E.M.N. Lutaaya vs Stirling Civil Engineering Ltd SCCA No. 11 of 2002.* It is a possessory action where if remedies are to be awarded, the plaintiff must prove a possessory interest in the land. It is the right of the owner in possession to exclusive possession that is protected by an action for trespass.

Such possession must be actual and this requires the plaintiff to demonstrate his or her exclusive possession and control of the land. The entry by the defendant onto the plaintiff's must be unauthorized. The defendant should not have had any right to enter into the plaintiff's land. In order to succeed, the plaintiff must prove that; he or she was in possession at the time of trespass; there was an unlawful or unauthorized entry by the defendant; and the entry occasion damage to the plaintiff.

As seen from the evidence, the plaintiff was indeed in physical and/ or actual possession of the suit premises at the time of eviction having rented the same from Inalu Trading Company Limited, the registered proprietor of the suit land comprised therein. However, the defendants in their defence stated that

Ambassador Zaddock Syong'oh Madiri reported a case at Kabalagala police station for criminal trespass on LRV 1351 Folio 1, Kyaddondo Block 244 Plot 3793 land at Muyenga Tank Hall. They then carried out investigations on the authenticity of both titles in respect of the suit land and established that Adam Kamulegeya of M/s Marketing Support Services was in possession of a forged certificate of title. It is from its investigations that it had the plaintiff evicted.

In an action for recovery of land, this is a substantive claim for getting declaratory orders as to the rightful ownership of land. Where there are two competing interests on the land, it is the duty of the court is to determine between the two parties who is the rightful owner of the said land i.e between two titles or interests.

Consequently the power to cancel certificates of title where fraud is alleged is vested in the High Court. Indeed, **Section 177 of the Registration of Titles Act** vests powers in the High Court to direct the Commissioner to effect any order of cancellation of a certificate of title. An aggrieved party complaining of fraud should straightaway file a suit for adjudication on the issue. (*See: Hilda Wilson Namusoke & 3 Others vs. Owalla's Home Investment Trust (EA) Limited, SCCA No. 15 of 2017*)

It is also important to note that fraud must be proved strictly, the burden being heavier than on a balance of probabilities generally applied in civil matters (*see: Kampala Bottlers Ltd v Damanico (U) Ltd; Civil Appeal No. 22 of 1992.*)

The defendants therefore had no powers to act on the allegations of fraud or claims made by a one Ambassador Zaddock Syong'oh Madiri and determining

the rightful owner in the face of the purported two competing interests on the suit land. When the issue is as to which of the two claimants has a better right to possession or occupation of a piece or parcel of land in dispute, the law will ascribe such possession and or occupation to the person who proves a better title thereto. A person in possession even without title can maintain an action in trespass against everyone except the person who has established a better title and hence a better right to possession.

In regards to the unauthorized entry onto the plaintiff's premises, the defendants alleged that they cannot be accused of trespass because they may with or without warrant enter into the premises where he or she reasonably suspects that an unlawful activity is taking place under section 21 and 27 of the Police Act. Counsel further submitted that the police shall not just watch on and wait for a court order and condone trespass as one's property is being encroached on as this will amount to the police abandoning its duty.

It is important to note that the **Constitution of Uganda under Article 27** provides for the right to privacy of a person, home and other property where it states that; no person shall be subjected to unlawful search of the person, home or other property of that person, unlawful entry by others of the premises of that person or interference with the privacy of that person's home, correspondence, communication or other property.

However, the right to privacy is not absolute and should be considered on a case-by-case basis or development. It should be subject to regulations. If the scope of the right to privacy is widened beyond limit, it may interfere with governance of

state or other person's constitutional rights. Similarly, if the contours of the right to privacy are too narrowed, it dilutes a person's fundamental rights.

Whenever an invasion of privacy is claimed, there are usually competing values at stake. Privacy may seem paramount to a person who lost it, but that right often clashes with other rights and responsibilities that we as society deem important.

The right to privacy is not unlimited and can be limited where there it is fair and justifiable in open and democratic society. Therefore, the law allows searches and seizures where there is probable and reasonable cause or reasonable basis for suspicion in order to facilitate criminal investigations. *See; Baguma-Mugarama v Uganda Revenue Authority Civil Suit No. 93 of 2014*

The purpose underlying the power of search is to assist the law enforcement officials to investigate violations of the law by unearthing evidence for the suspected commission of breaches of the law which may otherwise not be available to an investigating agency. The search is of an investigatory nature as it is conducted as a result of the belief that there is a contravention of the law.

The exercise of the power of search and seizure is of a drastic nature and constitutes a serious invasion of the affected person's privacy, property rights, reputation, business and his freedom. Therefore, the power of search and seizure must be exercised only in accordance with the law which must be strictly observed by the person conducting the search otherwise it will be declared illegal.

This is intended to minimize the chance of misuse or abuse of power of search and seizure, the question of procedural safeguards, subject to which such power may be exercised, becomes a matter of great significance.

The Police Act does not confer unqualified power of search and seizure. To do so would subject the power to constitutional objections. Some safeguards are therefore interwoven into the fabric of power of search and seizure. Such power is qualified by '*has reasonable grounds for believing*'.

There must be reasonable grounds to believe or reason to suspect that there is a breach of the law. The expression 'reason to believe' is not synonymous with subjective satisfaction of the police officer concerned. The belief must be held in good faith; it cannot be merely a pretence. There should be material adequate or evidence adequate for forming the reasonable belief to carry out a search or to issue search warrant or warrant card.

The courts have resisted attempts made from time to time by interested parties to have the scope of search power narrowed down restrictively interpreting the statutory provisions authorizing search, or by liberally interpreting the safeguards subject to which the power is given. By and large the courts have interpreted these provisions liberally and safeguards against misuse of search power narrowly.

It is open to the court to examine the question whether the reasons for the belief have a rational nexus or connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the investigation in question. If as a result of the search nothing incriminating is found, that by itself

cannot conclude that, at the inception, the search was *malafide* or was for irrelevant or extraneous reasons.

The law on search is clear that the police officers could only search without a warrant under the provisions of Section 27(1). Thereunder, the police officer had to be of a rank of Sergeant and above and honestly believe that there was something necessary for the purpose of an investigation into the offence he or she was authorised to investigate to be found in the place he intended to be searched and that the thing he was searching for could not be obtained without undue delay.

However, it is also a requirement that that officer must put down in writing the grounds of his or her belief and specify in writing so far as possible the item he is searching for. The written statement of defence does not mention anywhere that this was done and there was no evidence was called for the defendant to show court that this procedure was followed.

It is also a requirement under Section 27(5) that copies of record made under subsection (1) or (3) would immediately be sent to the nearest Magistrate empowered to take cognizance of the offence and to the owner or occupier of the place searched in this case the plaintiff. This was not done.

Under Section 27(9), the search was supposed to be carried out in a humane manner. In the instant case, the plaintiff's witnesses testified which was not rebutted, that the police threw out the Plaintiff's, vandalized, damaged and also confiscated several properties of the plaintiff. This was clearly seen in the evidence (annextured photographs) on the court record which were

uncontroverted by the defendants. The plaintiff's agents/ employees were denied access or presence during the purported or alleged search of the premises.

These provisions under Section 27 are mandatory if one is to claim protection under this section. It is an accepted principle of law that even where one has entered the premises lawfully, but begins doing criminal acts like threatening violence or assaulting the host, one becomes a trespasser (*See: The Six Carpenters' Case (1610) 8 Co. Rep 146a, 77ER 695, Cinnamond & Others vs British Airports Authority (1980) 2 ALL ER 368*). Considering all the circumstances surrounding this case, it is clear that the search was not done under Section 27. The police in this case carried out the search without recording reasons envisaged under the Police Act, the search was therefore illegal and unlawful. The action of the policemen was not intended to search but rather an eviction of the plaintiff from the premises because of the alleged fraudulent certificate of title.

It should be emphasized that statutory powers are not charters of immunity for any injurious or violation of rights done in exercise of them. The act done in pursuance of the statutory powers given by a statute must be exercised with judgment and caution in accordance with that law.

The power to search or seek an order for a search is an exercise of discretionary power and the court will interrogate whether the officer concerned has acted *bonafide* or *malafide* in ordering a search or acted on non-existent grounds or irrelevant considerations or has applied his mind or not to the question. *See Fuelex (u) Ltd v Commissioner General Uganda Revenue Authority HCCS No. 04 of 2010*.

Regarding the circumstances in this case, I find that the purported search as alleged by the defendants was illegally and unlawfully conducted. It was an intended act of eviction and taking vacant possession upon a complaint. Exhibit PE-5 was a letter from Twaruhukwa Erasmus directed in his letter dated 24th September 2018 that trespassers and the private security guards are removed and noted further “ *This being a clear case of trespass under the ‘police watch’ the requirement for a court order is dispensed with. The continued trespassing on the land under the police watch is bound to attract legal suits against government that cannot be defended*”

It is clear from the above letter that the police officers as agents of the defendants did evict the plaintiff from its premises as instructed and that the deployment of the police officers at the scene was not to witness the eviction and keep law and order but rather was to forcefully evict the plaintiff. The defendants did not adduce or lead any evidence before this court on these allegations showing that indeed, its presence at the scene was not to evict the plaintiff but rather to oversee the process of eviction by a court bailiff, in which case; the latter would need a court order and court authorization.

I therefore find that the police officers unlawfully entered onto the plaintiff’s premises thereby becoming trespassers and carried out unlawful eviction of the plaintiff.

On occasioning damage, the plaintiff’s witnesses testified that the police officers vandalized, damaged and confiscated its properties and carried them away in their trucks. The same have never been returned thus occasioning damage to the

plaintiff and loss. I am therefore inclined to believe that the plaintiff's evidence thus satisfying the third element of trespass.

The plaintiff claimed that the defendants are vicariously liable for the actions of the police officers who are its agents, employees and/ or servants. Vicarious liability was defined by court in the case **Okupa vs Attorney General & 13 Ors MC No. 14 of 2005** to mean "a legal doctrine where a person, himself blameless, is held liable for another person's conduct". Court further went on to state that "the rule is often justified by reference to the latin maxim "*qui facit per alium facit per se*" meaning that he who acts through another acts himself". Under the doctrine of vicarious liability, an employer is liable for the acts of his/ her employees done in the scope of that employee's duty.

For the doctrine of vicarious liability to apply, there must be three essential ingredients to wit; a relationship of employer and employee; the tort must be committed by the employee and in the course of business (see; **Muwonge -vs- Attorney General [1967]1 EA 17**)

In the circumstances before this court, it was uncontroverted that the police officers were acting in the course of their employment and on orders of the defendants; who are therefore vicariously liable for the said actions.

I therefore find that the defendants' actions amounted to trespassed onto the plaintiff's property and unlawful eviction of the plaintiff. This issue is answered in the affirmative.

Whether there was conversion of the plaintiff's goods by the defendants?

Counsel for the plaintiff submitted that to constitute conversion, there must be a positive wrongful act of dealing with the goods in a manner inconsistent with the owner's rights and an intention in doing so to deny the owner's rights or to assert a right inconsistent with them as per the case of *Departed Asians Property Custodian Board vs Issa Bukenya SCCA No. 26 of 1992*. He stated that the law only allows a police officer to seize property that he or she has reasonable grounds to be stolen, unlawfully obtained or otherwise relevant to an investigation for purposes of exhibiting it before court.

He submitted that however, this power must be exercised fairly, sparingly and only when fully justified by the exigencies of each individual's case as it interferes with the citizen's right to property which is a fundamental human right guaranteed under Article 26 of the Constitution.

Counsel thereby submitted that the plaintiff adduced uncontroverted evidence that the police officers who carried out the eviction carried its machinery and equipment and all office files and other items, loaded them onto their trucks which they drove away. These properties have never been returned to the plaintiff therefore amounting to conversion to which the defendants are vicariously liable for as the police men who were in their uniforms upon clear instructions were acting within the course of their employment.

For the defendants, counsel submitted that the police officers were not seen carrying any properties and loading them onto the trucks. He stated that the deployment was to ensure security during the whole exercise of eviction by private bailiffs. Counsel further submitted that the plaintiff has not adduced any

evidence/ receipt that show that the said machinery belonged to the plaintiff company and thus did not purchase the same.

Analysis.

I have already found that the police officers' actions amounted to trespass onto the plaintiff's property and its unlawful eviction for which the defendants are liable.

Conversion is the wrong committed by dealing with the goods of a person which constitutes an unjustifiable denial of his rights in them or the assertion of rights inconsistent with such right. (see: *Winfield and Jolowicz on Tort 15th edition page 588*) In **Moorgate Mercantile Company Ltd vs Finch and Read [1962] 1 QB 701**, the court set out the key elements of conversion as an act of willful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another and thereby that other is deprived of the use and possession of it. The two elements are the dealing with the chattel in a manner inconsistent with the right of the person entitled to it and secondly the intention in so doing to deny the person's right or to assert a right which is in fact inconsistent with such right. (see; **Barclays Mercantile Business Finance Ltd and Another vs Sibec Developments Ltd and Others [1993] 2 All ER 195, Deported Asian Property Custodian Board vs Issa Bukenya SCCA 92 of 1992.**

I am inclined to believe the evidence of the plaintiff which was uncontroverted by any evidence from the defendants that the police officers who carried out the eviction carried its machinery and equipment and all office files and other items, loaded them onto their trucks which they drove away. It is also clear that these

properties have never been returned to the plaintiff therefore amounting to conversion/detinue.

The defendants in their defence made a bare denial that the no properties or chattels were taken by police from the plaintiff company and none is at any police station. The defence did not lead any evidence to support the statement in defence and this would be imply that they admitted the evidence of the plaintiff which remained uncontroverted.

The actions of the defendants or their servants amounted to conversion/detinue when they refused to return the property of the plaintiff. The plaintiff in her letter dated 8th April 2019 to Inspector General of Police PE-11a demanded that the property confiscated or taken be returned to them. It appears the said letter was never responded and the said property was never returned. The plaintiff wrote another letter (PE-11b) demanding for the return of the confiscated property in June 2019 to State House Anti-Corruption Unit and the office of Attorney General was copied in, and still received no response.

The essence of conversion/detinue is that the defendant holds on to the property belonging to the plaintiff and fails to deliver the property to the plaintiff when a demand is made. Therefore detinue consists in wrongful withholding of the plaintiff's goods like in the present case where the defendant's agents have unjustifiably refused to deliver up possession of the confiscated items to the plaintiff. See *Umoru v Ijumu L.G.C (2010) 7 NWLR 1*

This issue is therefore answered in the affirmative.

What remedies are the parties entitled to the Plaintiff.

The remedies available to a plaintiff in an action for detinue are;

- a) Where the chattel is not available, the value of the chattel and damages for its retention. The plaintiff must prove both the value of the chattel and loss suffered following the retention of the chattel.
- b) Where the chattel is still available, the return of the chattel and the damages for its detention.
- c) Where the chattel, though available, had either been rendered useless, or is completely vandalized, hidden or taken out of jurisdiction and sight the value of the chattel and damages for its detention. *Umoru v Ijumu L.G.C* (2010) 7 NWLR 1

The amount recoverable as damage in an action for detinue is not specific. The measure of damages in cases of detinue is the market value of the goods detained and a sum of money representing the normal loss through detention of the goods and lastly, in case where the goods are profit making, the damage for the loss arising from the owner's inability to make use of the specific goods which may be classified as general and special damages.

Lord Nicholls has observed in *Kuwait Airways Corp v Iraq Airways Co (Nos 4 & 5)* [2002] 2 AC 883 at [67] that;

"The aim of the law, in respect of the wrongful interference with goods, is to provide just remedy. Despite its proprietary base, this tort does not stand apart and command awards of damages measured by some special and artificial standard of its own. The fundamental object of an award of damages in respect of this tort, as with all wrongs, is to award just compensation for loss suffered."

The plaintiff prayed for special damages to a tune of US\$1,137,320 and Ugx.14,000,000/= general damages, an order for compensation for lost investment expenditure, interest at 26% per annum from the date of eviction till payment in full, aggravated and punitive damages and costs of the suit.

The principle governing an award of special damages is clear. Special damages must be pleaded and proved. Special damages however need not always be proved by production of documentary evidence. Cogent verbal evidence can also do.(See; *Gapco (U) Ltd vs. AS Transporters Ltd SCCA No.7 of 2007, Kampala City Council vs Nakaye [1972] EA 446*)

The plaintiff averred that it suffered special damages worth US\$ 1,137,320 and hereby attached a commercial invoice PE7 issued by Merit Petrochem F.Z.C for the details of the goods that had been purchased worth US\$1,065,320.00. It further attached a receipt PE8 from Samudat Trading Company for the payment of Ugx. 14,400,000/= being payment for the water tanks and several water bills that indeed showed use of the water services while at the premises. The Plaintiff also attached its tenancy agreement PE4 wherein it was obligated to pay a sum of US\$3000 per month being US\$ 72,000 for the first two years to be paid upon the execution of this agreement.

I am thereby satisfied that the plaintiff has discharged its duty in proving its claim for the amounts herein above as the value of the chattels-machinery of the plaintiff confiscated by police and the same has not been returned to date. The recovery of its value as per PE-7 is allowed as assessed from the commercial invoice at US\$1,065,320.00 as the market value of the converted asset. The

plaintiff is further allowed special damages of 14,400,000/= as the value of the water tanks also taken and confiscated by police in the illegal eviction. I decline to award the paid rent of US\$72,000 which had been paid since this was recoverable from the landlord for the terminated tenancy by third parties.

As far as general damages are concerned, it is trite law that general damages are 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. The nature of the damages in this case is for the detention of the chattels or goods by the police officers since 2018 to date.

I find that the plaintiff has discharged its duty to prove the inconvenience as a result of the defendants' actions by way of loss of business or profit the machinery would have earned the plaintiff company. However, the claim put forward by the plaintiff for general damages of US\$3,000,000 and Shs 2,000,000,000/= is extremely outrageous and exaggerated. I would award the plaintiff a sum of 500,000,000/= for the loss of business earnings and income (Profit) since September 2018 to-date in exercise of the judicious estimation of the loss to the plaintiff.

Punitive damages are awarded to serve as a punishment to the agents and servants of defendants so that they do not repeat the same mistake. The plaintiff was a Ugandan company which had been duly granted an Investment Licence (PE-1) by Uganda Investment Authority to manufacture candles. This good project was killed by reckless action of the defendants' agents oblivious of the government policy of encouraging local investors. The government should check

the excesses of such erratic and non-patriotic officers who are frustrating local investment by interfering in civil disputes which ought to be determined by the courts of law instead of them turning their offices into quasi-courts. The responsible offices should investigate who stole the machines of the plaintiff in order to address similar problems in future.

An award is **Ugx 50,000,000/=** as punitive damages is granted to the plaintiff.

The plaintiff is awarded interest at a rate of 10% from the date of this Judgment until payment in full on the general damages.

As to the prayer for costs, Section 27 of the Civil Procedure Act provides that costs shall be in the discretion of the court and that costs shall follow the events unless the court has some good reasons otherwise to order.

Costs to the plaintiff.

I so order.

SSEKAANA MUSA
JUDGE
27th July 2022