

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS CAUSE NO. 24 OF 2022

NGOBI ANTHONY:..... APPLICANT

VERSUS

OLIVIA ORISHABA:..... RESPONDENT

BEFORE JUSTICE FARIDAH SHAMILAH BUKIRWA

RULING

Background

This matter was brought under Section 1, 3, 4(1) (b) and (2), 9 and 10 of the Human Rights and Freedoms) (Enforcement Procedure) Rules S. 1 31 – 2019) for declarations and orders that the Applicant has unrestricted right of ownership, use and possession of his motor vehicle Toyota Wish, Reg. No. UBE 010L white in colour, a declaration that the Applicant has as against the Respondent a right of access to and quite enjoyment of proprietorship of the suit vehicle, a declaration that the Applicant is free to exercise his rights above in respect of the suit vehicle, a declaration that the Applicant is entitled to freedom from harassment by the Respondent, a declaration that the respondent's seizure and detention of the suit vehicle is wrongful, a declaration that the Respondent's continued detention of the suit vehicle violates the Applicant's above mentioned rights and freedoms and a declaration that the conduct of the Respondent is oppressive, high handed, unconstitutional, illegal, null and void .

Brief facts

The Applicant is the owner of motor vehicle Toyota Wish, Reg. No. UBE 010L white in colour. The Respondent is a law enforcement public servant working as the officer in charge of criminal investigations at Kamuli Police Station in Kamuli District. On the 5th day of April, 2022, the Applicant was arrested and the suit vehicle impounded and detained by the Respondent at Kamuli Police Station. It contained two laptops HP Elite Book 830G5 and 830G3 valued at UGX 5,400,000/= (Five Million Four Hundred Thousand Shillings, three (3) pairs of Italian made suits valued at UGX 3,000,000/= (Three Million Shillings) and cash amounting to UGX 2,500,000/= (Two Million Five Hundred Thousand Shillings) The Applicant has since demanded the release of his vehicle and the said belongings in vain and the same have remained wrongfully detained and retained by the Respondent yet the same has never been disclosed as an exhibit in any



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criminal proceedings and as a result, the Respondent has denied the Applicant freedom and quite possession of his vehicle and his personal belongings hence this application.

Representation

The Applicant is represented by Counsel John Isabirye of Isabirye & Co. Advocates while the Respondent is represented by Counsel Edgar Kakoma on brief for counsel Mukama Sanyu Jamil of Bloom Advocates.

When the matter came up for hearing, Counsel for the Respondent indicated that he had objections to raise however, given that he was on brief, he could not raise the same. Court directed that the Respondent prepares the preliminary objections and serves the Applicant. Court further directed the parties to file their respective submissions which they did and which Court has taken into account in delivering this ruling.

Submissions

Counsel for the Respondent raised a preliminary objection that the Application raises no cause of action against the Respondent in public law under which it is brought. Counsel relied on the case of **Tororo Cement Co. Limited Vs Fronkina International Limited SCCA No.2 of 2002** to define a cause of action. Counsel further submitted that the Applicant's cause of action is in respect of a tort of detinue of his motor vehicle and the claims sought are ordinarily obtainable under private law as opposed to public law under which the current application has been made. Counsel referred to the case of **Uganda Journalists Association, Hannington Kisakye & Eric Yiga Vs Waninda Fred, M. A No. 121 OF 2019**. Counsel concluded that the Application is misplaced, raises no cause of action and should be dismissed with costs.

In reply, counsel for the Applicant submitted that the right to own property of the Applicant that was violated by the Respondent is a constitutional guarantee under Article 26 of the Constitution, the enforcement of which is provided for under Sections 3(1) and 10 of the Human Rights (Enforcement) Act of 2019. Counsel further submitted that the Respondent's argument that the Applicant's claim is rooted in the private common law of the tort of detinue is misleading on remedies sought, counsel relied on section 3(1) of the Human Rights (Enforcement) Act.

Issue

1. Whether the Application does not disclose a cause of action.



Analysis

It is a settled principle of law that a suit discloses a cause of action if it shows that the Plaintiff enjoyed a right, that right has been violated and that the violation is by the Defendant. Any omission or defect may be put right by amendment. See **Auto Garage Vs Motokov [1971] E. A 514 cited with approval in Joseph Mangafu & 11 Ors Vs Agilis Ranch 20 & 21 Ltd & 3 Ors HCMC No. 011 of 2020**

In determining whether a Plaint discloses a cause of action, Court must look at the Plaint and the annexures thereto with an assumption that all facts as pleaded are true. **Refer to Narottam Bhatia & Anor Vs Boutique Shazimi Ltd SCCA No. 6 of 2009 [2010] cited with approval in in Joseph Mangafu & 11 Ors Vs Agilis Ranch (supra).**

In **Joseph Mangafu case (supra)** , the Applicants in their amended Notice of Motion sought to enforce their constitutional rights and freedoms guaranteed under various Articles of the Constitution. The Applicants pleaded that the same human rights and freedoms were violated and that the Respondents were liable. Court was of the view that the Application disclosed a cause of action.

In this instant application, it can be deduced from the Notice of motion that the Applicant is the owner of motor vehicle Toyota Wish, Reg. No. UBE 010L ,white in colour which was impounded by the Respondent with the Applicant's belongings therein. There is no iota of evidence in the Respondent's pleadings that the suit vehicle has ever been required or exhibited in any criminal proceedings. This Court is therefore persuaded that the Applicant has been denied his right of access and ownership of the suit vehicle for which the Respondent is liable in total contravention of his constitutional rights.

Furthermore, it is a settled principle of law that where certain facts are sworn to in an affidavit by the Applicant and are not rebutted by the Respondent in the affidavit in reply , such facts are presumed to be admitted by the Respondent. In the instant case, the Respondent does not challenge the Applicant's claim that his motor vehicle and personal belongings were impounded by the Respondent and as such admits the Respondent admits the same.

With regard to the argument advanced by the Respondent that this is a matter that is rooted in the private common law of tort of detinue rather than an action in public law, I am convinced with the Applicant's contention that the Application is clearly supported by the provisions of Section 3 (1) of the Human Rights (Enforcement) Act of 2019 which states that;

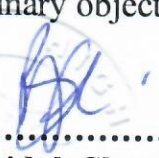


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"In accordance with article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act"

I am therefore convinced that the Application raises a cause of action which needs to be investigated through a full hearing of the Application as it falls within the ambit of the Human Rights (Enforcement) Act of 2019. I am not persuaded by the Respondent's contention that this is a matter that should fall under private law of the tort of detainee.

The preliminary objection is hereby over ruled with costs.


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Justice Faridah Shamilah Bukirwa
Delivered by email on 2nd December, 2022.