

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

CIVIL SUIT NO. 126 OF 2018

WAKISO MATHIAS =====PLAINTIFF

VERSUS

ATTORNEY GENERAL=====DEFENDANT

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

JUDGMENT

Introduction:

[1] This suit was instituted by Wakiso Mathias (hereinafter referred to as ‘the Plaintiff’) against the Attorney General (hereinafter referred to as ‘the Defendant’) in which he sought for special, general and punitive damages arising from his container and goods therein which were impounded and taken away by officers of Uganda Police Force. The Plaintiff also sought for the costs of this suit.

The Plaintiff’s case:

[2] The Plaintiff pleaded that, in 2017 he had a dispute with Dependable Outcomes Limited over land comprised in Kibuga Block 12 Plot 1757 land at Mengo which he was occupying (hereinafter referred to as ‘the suit land’). On the 25th August 2017 the then District Police Commander of Old Kampala, Mr. Nsaba Charles, well aware of the dispute, proceeded to the suit land, accompanied by other officers of Uganda Police Force, forcefully removed and took away his 2 containers which had various business merchandise and assets. On the 12th October 2017, the then District Police Commander of Old Kampala, Mr. Grace Nyangoma also went to the suit land and took his remaining container which had 400 bags of maize flour.

[3] The Plaintiff contended that the police officers were in the normal course of their employment, making the Defendant vicariously liable for their actions. The Plaintiff further contended that as a result of the actions of the Defendant's agents, he lost a profitable business and merchandise which were in the containers, for which he seeks special, general and punitive damages.

Defendant's case:

[4] The Defendant denied all the allegations of the Plaintiff or knowledge of all the facts contained in the plaint.

Issues:

[5] The issues for the determination of the court are;

1. Whether the officers of Uganda Police Force committed the tort of trespass to goods, conversion and detinue against the Plaintiff.
2. Whether the Defendant is vicariously liable for the actions of the said officers of Uganda Police Force.
3. What remedies are available to the parties.

Evidence adduced:

[6] The Plaintiff testified as PW1. He called Brankya Brooks Christopher who was the supervisor of his agricultural produce business as PW2 and Meddy Wamundu who was his manager as PW3. The Plaintiff adduced 8 documents which were admitted in evidence as PE1 – PE8. The Defendant did not attend the hearing despite being aware of the hearing date.

Legal representation and arguments:

[7] At the hearing, the Plaintiff was represented by Mr. John Kaddu of M/S Kaddu & Partners Advocates, while the Defendant was represented by Ms. Maureen Ejang from the Attorney General's Chambers. At the close of the hearing, the court gave counsel directives to file written submissions, which directives were duly complied with.

[8] On issue 1, counsel for the Plaintiff submitted that the 3 witnesses proved that the police officers took 3 containers of the Plaintiff together with what was contained therein. Upon demand for the containers, the officers remained adamant and did not return the containers. The containers have since disappeared. According to counsel for the Plaintiff, the Plaintiff proved all the elements of the tort of conversion and detinue. On issue 2, counsel for the Plaintiff submitted that at the time of commission of the tort of conversion and detinue, the police officers were in the course of their employment. Counsel relied on the case of *Akech rose versus Attorney General HCCS No. 368 of 2018* for what amounts to vicarious liability. On issue 3, counsel for the Plaintiff submitted that the Plaintiff lost 40 bags of maize flour worth UGX 40,000,000/= and each container worth UGX 7,000,000/=. Counsel prayed that the court should award the Plaintiff compensatory relief under Article 26(2) (b) of the Constitution for arbitrary and unlawful deprivation of the right to property.

[9] Counsel for the Defendant on the other hand submitted on issue 1 that for an action for detinue to succeed, the value of the goods claimed when not returned must be assessed as at the date of the judgement. According to counsel for the Respondent, no evidence was adduced at the hearing on the value of the maize flour. On issue 2, counsel for the Defendant submitted that the police officers were not executing the mandate of the government of Uganda. They were not in the course of their employment, but they acted on their own. On issue 3, counsel for the Defendant submitted that the special damage of UGX 40,000,000/= which were pleaded were not proved. Counsel further submitted that the Plaintiffs prayer for the value of the containers was not pleaded. Counsel prayed that the suit be dismissed with costs.

Burden and standard of proof:

[10] The burden of proof in civil matters lies upon the person who asserts or alleges. Any person who, wishes the court to believe the existence of any particular fact or desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts, must prove that those facts exist. (*See section 101, 102 and 103 of the Evidence Act Cap 6 of the laws of Uganda*). The opposite part

can only be called to dispute or rebut what has been proved by the other party (See Sebuliba versus Co-operative Bank (1982) HCB 129). The standard of proof required is on the balance of probabilities. In Miller versus Minister of Pensions (1947) 2 ALL ER 372 Lord Denning stated;

“That the degree is well settled. It must carry a reasonable degree of probability but not too high as is required in a criminal case. If the evidence is such that the tribunal can say, we think it is more probable than not, the burden of proof is discharged but if the probabilities are equal, it is not.”

Consideration and determination of the court:

Issue 1: Whether the officers of Uganda Police Force committed the tort of trespass to goods, conversion and detinue against the Plaintiff.

[11] I consider it important to have an exposition of the common law remedies to persons with interest in goods where those interest is interfered with or denied before determining this issue. The property holders at common law have the right of action for wrongful interference with chattel whether the interference amounts to a denial of title or possession or to damage or destruction of the goods. A plaintiff who has been denied a lawful interest in the chattel can bring an action to recover the title or possession or obtain compensation for the loss sustained according to the nominate torts into which the particular case falls. The forms of action developed at common law are; trespass to goods(chattels), conversion (or trover), detinue and replevin. The torts were historically distinct in their operation and purpose than they are in modern law. Today, the court can give the remedy which the facts justify, even if the plaintiff may have called his action by a wrong name.

[12] The tort of trespass to goods is committed essentially by wrongful interference with the possessory title of the plaintiff in respect of the goods actually in his or her possession at the time of the interference. It is any unlawful possession of the goods by seizure, removal or by direct act causing damage to the goods (See: Departed Asians Custodian Board versus Issa Bukenya T/a New Mars War House SCCA No. 26 of

1992). Otherwise called trespass de bonus asportatis, it is the taking and carrying away of chattel from the plaintiff's possession, that is, the commission of an asportation, as in larceny (theft of personal property). Direct interference with the actual possession of the plaintiff needs to be established to make out the tort. As with other forms of trespass, the tort is actionable per se, that is, without the need to show loss by the plaintiff. The action is in its nature possession as opposed to proprietary and it entitles the plaintiff only to damages. Possession of the chattel cannot be recovered by an action in trespass to goods. The damages are essentially assessed by reference to the costs of repair or the value of the goods if destroyed.

[13] The tort of conversion is committed by an unlawful interference with the plaintiff's title in the goods. It is committed when the defendant has dealt with the chattel in a manner which is so seriously inconsistent with the plaintiff's right to possession of the chattel that it amounts to a denial of that right. Conversion is a single wrongful act, and the cause of action accrues at the date of conversion. The plaintiff must show a right to immediate possession and that the defendant's act was a denial. In conversion, damages are assessable at the time of the commission of the tort. The plaintiff is compensated in damages calculated by reference to the value of the hire of the chattel for the period of its conversion or the value of the chattel itself. In Wickham Holdings Ltd v Brooke House Motors Ltd [1967] 1 All ER 117 Lord Denning MR stated that:

"I am well aware, of course, that prima facie in conversion the measure of damages is the value of the goods at the date of the conversion."

[14] The tort of detinue is the action for wrongful detention of goods (See: Christine Bitarabeho versus Edward Kakonge SCCA No. 4 of 2000). Just like in conversion, the tort is proprietary in nature. The tort is committed by the wrongful refusal to return goods of the plaintiff on demand. It is different from conversion which requires intentional interference with goods. Detinue is not committed by the defendant until a demand has been made by the plaintiff and the defendant has refused to surrender the goods. It is a continuing cause of action which accrues at the date of the wrongful refusal

to deliver up the goods and continues until delivery up of the goods or judgement in the action for detinue. Like in conversion, in detinue the plaintiff must show an immediate right of possession of the goods at the time of the refusal. In detinue, it is open to the plaintiff to seek recovery of the goods or damages or both. Damages are assessable at the date of the judgement. In **General and Finance Facilities Ltd v. Cooks Cars (Romford) Ltd 1963 W.L.R. 644** Diplock L.J stated that an action in detinue may result:-

“In a judgement in one of the three different forms; (1) for the value of the chattel as assessed and damages for its detention; or (2) for return of the chattel or recovery of its value; or (3) for return of the chattel and damages for its detention.”

[15] In many cases the same facts may constitute both trespass to goods and conversion; thus, where a man steals goods, he commits trespass to goods by interfering with the possession of them and conversion by appropriating them to his own use. Mere damage to goods, however, or mere removal of them without appropriation, is no conversion, though it may be trespass. Conversely, a mere denial of title to goods may amount to a conversion but may not amount to trespass to goods if the defendant was in lawful possession of the goods but merely denied the plaintiff ownership. Thus, a bailee who misappropriates goods is liable in conversion but not in trespass since he would have been in lawful possession of the goods.

[16] In the instant case, the Plaintiff adduced evidence that on the 25th August 2017 the then District Police Commander of Old Kampala, Mr. Nsaba Charles, in the company of other police officers, proceeded to the suit land and forcefully removed and took away his 2 containers which had various business merchandise and assets belonging to him. He further adduced evidence that on the 12th October 2017, the then District Police Commander of Old Kampala, Mr. Grace Nyangoma also went to the suit land and took away his remaining container which had 400 bags of maize flour. The containers were taken to Old Kampala Police Station. The plaintiff adduced to the court pictures of the containers while they were at the Police Station. The pictures were admitted in evidence

as PE6 and PE7. He adduced evidence that on the 21st November 2017 his lawyers wrote to the police officers demanding for the immediate release of the containers but no response was given to his lawyers. The copy of the letter of the plaintiff's lawyers addressed to the District Police Commander of Old Kampala Police Station was admitted in evidence at PE5. The plaintiff further adduced evidence that the containers were later transferred from Old Kampala Police Station to Nakulabye Police Station and they have since vanished. The Plaintiff's evidence was corroborated by that of PW2 and PW3. The evidence of the Plaintiff and his witnesses was not challenged by the Defendant in any way.

[17] In my view, the above evidence proves on the balance of probabilities that the police officers took and carried away of the 3 containers of the Plaintiff together with their content. The actions of the police officers wrongfully interference with the Plaintiff's possessory title in respect of the goods. This amounts to trespass to goods. When the Plaintiff demanded for the containers, the police officers wrongfully withheld the containers. This amounts to detainment. The containers have since completely disappeared. This amounts to unlawful interference with the plaintiff's title in the goods, which is conversion. Issue 1 is therefore answered in the affirmative.

Issue 2: Whether the Defendant is vicariously liable for the actions of the said officers of Uganda Police Force.

[18] In **Hon. Okupa Ellijah and 2020 others versus Attorney General and 3 others HCMA No. 14 of 2005** my brother judge Batema N.D.A stated that:

“Vicarious liability is a legal doctrine where one person, himself blameless, is held liable for another person's conduct. The rule is often justified by reference to a Latin Maxim qui facit per alium facit per se (he who acts through another acts himself). Under that doctrine an employer is liable for the acts of his/her employees done in the scope of that employee's duty.”

[19] In **Muwonge V. Attorney General [1967]1EA 17, Newbold P.** stated thus;

“An act may be done in the course of a servant’s employment so as to make his master liable even though it is done contrary to the orders of the master and even if the servant is acting deliberately, wantonly, negligently or criminally or for his own benefit never the less if what he did is merely a manner of carrying out what he was employed to carryout then his master is liable.” Underlined for emphasis.

[20] In the instant case, the Plaintiff did not plead and adduce any evidence to prove that the taking away of his containers was a manner of carrying out what the police officers were employed to carry out. The role of the police is clearly provided for in Article 212 of the constitution which provides that:

“212. Functions of the Uganda Police Force.

The functions of the Uganda Police Force shall include the following—

- 1. (a) to protect life and property;*
- 2. (b) to preserve law and order;*
- 3. (c) to prevent and detect crime; and*
- 4. (d) to cooperate with the civilian authority and other security organs established under this Constitution and with the population generally.”*

[21] In addition, Article 211(2) of the Constitution provides, inter alia, that subject to the provisions of this Constitution, every police force in Uganda shall have such functions as Parliament may by law prescribe. Section 4 of the Police Act, Cap 303 provides that:

“4. Functions of the force.

(1) Subject to the Constitution and this Act, the functions of the force are—

- (a) to protect the life, property and other rights of the individual;*
- (b) to maintain security within Uganda;*

- (c) to enforce the laws of Uganda;*
- (d) to ensure public safety and order;*
- (e) to prevent and detect crime in the society;*
- (f) subject to section 9, to perform the services of a military force; and*
- (g) to perform any other functions assigned to it under this Act.”*

[22] Nowhere, both in the Constitution and the Police Act, is the police permitted to remove personal property and take it away. No evidence was adduced to show that the properties were taken to the police stations as exhibits in any criminal case. The police officers were therefore not carrying out what they were employed to do. They were acting in a frolic of their own. The Defendant cannot be held liable for their actions. Issue 2 is therefore answered in the negative.

Issue 3: What remedies are available to the parties.

[23] Having found that the Defendant is not liable for the actions of the police officers who took away the containers of the Plaintiff, the plaintiff thus had no cause of action against the Defendant. This suit is accordingly dismissed with costs to the Defendant.

I so order.

Dated and delivered by email this 22nd day of September 2023



Phillip Odoki

JUDGE.