

**THE REPUBLIC OF UGANDA**

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

**CIVIL SUIT NO. 248 OF 2020**

- 1. KIBASHA WILBER**
- 2. SSENYONDO JESSE ::: PLAINTIFFS**

**VERSUS**

- 1. ATTORNEY GENERAL**
- 2. UGANDA COFFEE DEVELOPMENT AUTHORITY**
- 3. KAGIMU RICHARD ::: DEFENDANTS**

**BEFORE: HON. MR. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

The plaintiffs filed this suit against the defendants jointly and severally for detinue, conversion, wrongful detention of property and loss of earnings, special and general damages interest and costs of the suit arising out of wrongful and illegal detention of the 1<sup>st</sup> plaintiff's coffee and eucalyptus seedling and the 2<sup>nd</sup> plaintiff's motor vehicle registration no. UAS 856B.

The 1<sup>st</sup> plaintiff alleges that on 5<sup>th</sup> February, 2019, he purchased 140,000 packed seedlings of coffee from Hadijah Namakula coffee nursery at Ugx. 46,000,000/=. He also purchased 20,000 eucalyptus seedlings at Ugx. 2,000,000/=. The said Hadijah Namakula coffee nursery possessed a valid license duly issued by the 2<sup>nd</sup> defendant allowing it to deal in coffee production and farming. Prior to the purchase, the 1<sup>st</sup> plaintiff had entered into a memorandum of understanding with third parties to wit; Cankara Bosco, Lakony Robert, Onek John Bosco, Okello Morrish Atari and Ojok Keneth wherein he was supposed to supply them with the

said seedlings sufficient to farm 50 acres of land in Nwoya district at an agreed consideration. He had also hired a tractor to till and prepare the land for coffee and eucalyptus farming.

Consequently, on 5<sup>th</sup> February, 2019, the 1<sup>st</sup> plaintiff hired the 2<sup>nd</sup> plaintiff's motor vehicle truck Reg. No. UAS 856B to transport the seedlings to Nwoya district. He also hired a one Joshua Maweje to drive the motor vehicle. At around 4:30pm, while Maweje was driving the 2<sup>nd</sup> plaintiff's motor vehicle at Kawanda Matugga, he was intercepted by a police officer who identified himself as ASP Mugisha Paul and the 3<sup>rd</sup> defendant who without any valid reason or lawful excuse impounded the truck and took it to Kabanyoro police station where it remains in custody to date.

The plaintiffs allege that they have taken every effort to retrieve the motor vehicle and the seedlings from Kabanyoro police station and from the Uganda Coffee Development Corporation but to no avail. The 1<sup>st</sup> plaintiff alleged that the seedlings have since perished and become unfit for the intended purpose while the 2<sup>nd</sup> plaintiff's car is in a dilapidated state as a result of non-maintenance by the police and has since depreciated in value to Ugx. 30,800,000/=. The plaintiffs aver that the defendants' actions had resulted into untold inconvenience and financial loss hence this suit.

The 1<sup>st</sup> defendant filed its written statement of defence wherein it denied all the allegations made by the plaintiffs and stated that the plaintiffs were not entitled to any of the reliefs sought. The 1<sup>st</sup> defendant stated that it shall raise a preliminary point of law that the plaint is bad in law, misconceived and should be struck out with costs. The 1<sup>st</sup> defendant further stated that the coffee and eucalyptus seedlings were impounded together with the motor vehicle reg. no. UAS 856B following complaints lodged at police and that investigation into the matter are ongoing and incomplete.

The 2<sup>nd</sup> and 3<sup>rd</sup> defendants also filed their written statement of defence wherein they denied any liability and stated that they shall raise a preliminary objection

that the suit does not disclose a cause of action against them and falls within the pecuniary jurisdiction of the chief magistrates' courts.

The 2<sup>nd</sup> and 3<sup>rd</sup> defendants further contended that the 2<sup>nd</sup> defendant is government agency with an overall responsibility to supervise the coffee sector in Uganda which includes licensing coffee nursery operators ensuring that seedlings supplied to farmers are of set quality standards and from approved source; identify farmers/ areas that need coffee seedlings, supply coffee seedlings to farmers in Uganda free of charge. It was further stated that it is mandated to ensure that the quality and standard of coffee planting materials and seedlings distributed meet the set standards.

The 2<sup>nd</sup> defendant contended that it filed a complaint at the police station when they suspected that someone was transporting coffee seedlings whose source and quality were in doubt in motor vehicle reg. no. UAS 586B. Acting on the complaint, the Uganda police force intercepted the motor vehicle to enable them inquire about the source and quality of the coffee seedlings. On checking the seedlings on the truck, it was discovered that the motor vehicle was carrying coffee seedlings of both robusta and Arabica coffee types of poor and unfit standards from unknown sources.

The 2<sup>nd</sup> defendant averred that it was duly exercising its lawful mandate in carrying out its duties and obligations in the coffee subsector and thus, the plaintiffs have no claim against it. It further contended that the plaintiffs were obliged to mitigate their losses by retrieving the motor vehicle from the police station as soon as it was possible.

The 3<sup>rd</sup> defendant contended that he is an employee/ agent of the second defendant and the allegations against him were executed in the course of his employment and thus not liable to be sued in his personal capacity by the plaintiffs on their alleged claims.

The parties filed a joint scheduling memorandum where they agreed to some facts and raised several issues for determination by this court.

### Agreed Facts

1. On the 5<sup>th</sup> February, 2019 at around 4.30pm, while Joshua Maweje was driving the 2<sup>nd</sup> plaintiff's motor vehicle at Kawanda Matugga, he was intercepted by a police officer identified as ASP Mugisha Paul impounded the truck and took it to Kabanyoro Police Station where it remains in custody up to when it was retrieved by order of court.
2. The 2<sup>nd</sup> plaintiff filed miscellaneous application No. 665 of 2020 seeking for a mandatory injunction against the defendants to release motor vehicle Registration No. UAS 856B Fuso Truck which was granted.

### Agreed Issues

1. **Whether the plaintiff has a cause of action against the 2<sup>nd</sup> and 3<sup>rd</sup> defendant?**
2. **Whether the 3<sup>rd</sup> defendant is liable to be sued?**
3. **Whether the coffee seedlings were of poor and unfit standards from unknown sources?**
4. **Whether the defendants wrongfully and illegally detained property belonging to the plaintiff?**
5. **What are the remedies available to the parties?**

The plaintiffs were represented by *Mr. Ssemwogerere Samuel* and *Ssebowwa Solomon* whereas the 1<sup>st</sup> defendant was represented by *Mr. Muwonge Mark* and *Mr. Ociti Samuel* represented the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

The plaintiffs led evidence of 5 witnesses through their respective witnesses they were cross-examined. While the defendants testified through the evidence of 3<sup>rd</sup> defendant.

The parties were ordered to file written submissions which were considered by this court in resolution of the issues.

I have noted that the parties keep referring to the subject motor vehicle reg. no. UAS 856D. However, a look at the evidence shows that the subject vehicle is of reg. no. UAS 856B and I shall describe it as that.

### **Determination**

*Whether the plaintiff has a cause of action against the 2<sup>nd</sup> and 3<sup>rd</sup> defendant and whether the 3<sup>rd</sup> defendant is liable to be sued.*

Counsel submitted that the plaintiffs have a cause of action against the defendants jointly and severally for detinue, conversion, wrongful detention of property and loss of earnings. Counsel defined a cause of action as per *Tororo Cement Co. Ltd vs Frokina International Ltd SCCA NO. 2 of 2001* to mean every fact which is material to be proved to enable the plaintiff to succeed or every fact which if denied, the plaintiff must prove in order to obtain judgement. He further relied on *Auto Garage vs Motokov (No.3) [1971]EA. 514* for guidelines determining a cause of action to include; the plaintiff must show that the plaintiff enjoyed a right, the right has been violated and that the defendant is liable.

Counsel further submitted that the coffee and eucalyptus seedlings got spoilt while the truck was impounded at Kabanyoro police station and also the motor vehicle suffered depreciation arising from mechanical conditions that arose while in custody. As such, counsel submitted that the 1<sup>st</sup> defendant is vicariously liable for the actions of the errant officer who detained the plaintiffs' motor vehicle and seedlings without a lawful cause which were carried out in scope of duty as a police officer.

Counsel submitted that PW1, PW2 and PW5 testified that while driving truck reg. no. UAS 586B, he was intercepted by ASP Mugisha Paul and Kajimu Richard who impounded the motor vehicle and seedlings on it. The motor vehicle was moved to Kabanyoro police. This evidence was unrebutted. That this shows that ASP Mugisha who is an employee of the Uganda police, a government agency unlawfully impounded the truck and also the seedlings which act was done in line of duty serving at the Uganda police force.

In respect of the 2<sup>nd</sup> defendant, it was submitted that under para. 7 of the amended plaint, a one Kagimu Richard, the 3<sup>rd</sup> defendant and employee of the 2<sup>nd</sup> defendant while serving in his capacity as a regional coffee extension officer without any valid reason unlawfully impounded the 2<sup>nd</sup> plaintiff's truck while transporting the 1<sup>st</sup> plaintiff's seedlings and took it to Kabanyoro police station where it was detained until released by court.

Counsel submitted that the 2<sup>nd</sup> defendant is vicariously liable for the actions of the errant officer; Kagimu Richard who impounded and detained the plaintiffs' property without lawful cause at Kabanyoro police station which action were carried out in scope of duty as a regional coffee extension officer.

Counsel further stated that DW1 gave evidence in chief to confirm that indeed he carried out his acts during the course of his duty. This hence creates a cause of action against the 2<sup>nd</sup> defendant under vicarious liability.

For the 3<sup>rd</sup> defendant, counsel submitted that DW1 led evidence to the effect that he personally stopped the subject motor vehicle and further caused it being detained at the police station. This clearly shows that a right to property which was enjoyed by the plaintiffs; was violated by the 3<sup>rd</sup> defendant who is liable. He further stated that DW1 testified during cross examination that he is an employee of the 2<sup>nd</sup> defendant and further confirmed that he impounded the plaintiff's motor vehicle and seedlings. He further gave evidence that the 2<sup>nd</sup> defendant was supposed to investigate and prosecute the matter of the impounded seedlings.

Counsel submitted that the 3<sup>rd</sup> defendant was wrongly sued and as such, this suit should be dismissed against him with costs. He stated that it is uncontested that the 3<sup>rd</sup> defendant is an employee of the 2<sup>nd</sup> defendant and, as has been led in evidence by the plaintiffs and DW1, he was exercising powers conferred on him by the 2<sup>nd</sup> defendant to supervise and coordinate coffee activities at the time of the incident.

Counsel was in agreement with the reasoning of *Okupa vs Ag & 13 Ors* (supra) and noted that the wrong complained of in respect of the 3<sup>rd</sup> defendant was done

in the course of his employment and as such, his actions are answerable by the 2<sup>nd</sup> defendant.

Counsel therefore submitted that the 3<sup>rd</sup> defendant was wrongly joined as a party to the suit, the causes of action, if any against him is vicariously held against the employer, the 2<sup>nd</sup> defendant and therefore prayed that the suit be dismissed against the 3<sup>rd</sup> defendant with costs.

### **Analysis**

The decision of *Tororo Cement Co. Ltd vs Frokina International Ltd Civil Appeal No. 21 of 2001* laid down three essential elements that a plaintiff must show to prove the existence of a cause of action which are that; he/ she enjoyed a right; that the right has been violated; and that the defendant is liable.

The plaintiffs' claim against the defendants is in detinue, conversion, wrongful detention of property and loss of earnings. The plaintiffs alleged that the ASP Mugisha Paul; an employee of the 1<sup>st</sup> defendant and while serving in capacity as an officer of the Uganda Police without any valid unlawfully impounded truck UAS 856B belonging to the 2<sup>nd</sup> plaintiff while transporting seedlings belonging to the 1<sup>st</sup> plaintiff and took it to Kabanyoro police station where it was detained.

In respect of the claim against the 2<sup>nd</sup> defendant, the plaintiffs aver that the Kagimu Richard, the 3<sup>rd</sup> defendant and employee of the 2<sup>nd</sup> defendant while serving in his capacity as a regional coffee extension officer without any valid reason unlawfully impounded the 2<sup>nd</sup> plaintiff's truck while transporting the 1<sup>st</sup> plaintiff's seedlings and took it to Kabanyoro police station where it was detained until released by court.

From the evidence on the court record, it is clear that the plaintiffs' had a right as to ownership of property in the truck vehicle and eucalyptus and coffee seedlings which were impounded by the 1<sup>st</sup> and 2<sup>nd</sup> defendants through their agents/ employees thereby violating the plaintiffs' rights to ownership for which the defendants would be liable.

Counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants submitted that the 3<sup>rd</sup> defendant was wrongly sued and that the suit against him should be dismissed with costs since it is not in dispute that he is an employee of the 2<sup>nd</sup> defendant and thus the latter is vicariously liable for his actions which were done during the course of his employment.

Vicarious liability has been defined in **Black's Law Dictionary 11<sup>th</sup> Edition** to mean liability that a supervisory party (such as employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties. In deciding whether the employer is vicariously liable or not, the questions to be determined are: whether or not the employee or agent was acting within the scope of his employment; whether or not the employee or agent was going about the business of his employer at the time the damage was done to the plaintiff.

It is not in dispute that the 2<sup>nd</sup> defendant is vicariously liable for the acts done by the 3<sup>rd</sup> defendant in the circumstances since both the plaintiffs and the 2<sup>nd</sup> defendant acknowledge that he was acting for and on behalf of the latter in his official capacity when he caused the impounding of the motor vehicle and the coffee seedlings thereon. The 3<sup>rd</sup> defendant was joined as the person who instigated the impounding of the truck and was therefore properly joined to explain his role in the circumstances of the case.

This issue is therefore answered in the affirmative. The plaint discloses a cause of action against the defendants.

*Whether the coffee seedlings were poor and unfit for plantation and from unknown source?*

Counsel for the plaintiffs submitted that the coffee seedlings were from known sources and of good and fit for purpose standards. PW1 testified that he purchased coffee seedlings worth Ugx. 46, 000,000/= from Hadijah Namakula on the 21<sup>st</sup> January, 2019 who has a valid license allowing her to produce coffee seedlings which evidence is collaborated by PW4, Hadijah Namakula who confirms that the



seedlings were purchased from her coffee nursery certificate issued by Uganda Coffee Development Authority valid 2017 to 2019.

He submitted that this clearly shows that the seedlings that were impounded were from a known source and one that had a certificate of assurance that they are able to produce good quality coffee planting materials. Counsel further submitted that the allegation by the defendants that the seedlings were of poor and unfit standards from unknown sources is untenable as DW1 failed during cross examination to establish whether any further investigations were carried out to prove the allegations thereto.

He submitted that the defendants did not provide any evidence on record to prove that the coffee seedlings were of poor and unfit standards from unknown sources since they did not carry out any investigations into the matter but abandoned everything at Kabanyoro police station.

He therefore prayed that this court finds that the seedlings in dispute were from a known source which had a certificate of assurance that they are able to produce good quality coffee planting materials and that is Namakula Hadijah coffee nursery which had a valid coffee nursery certificate, PEx3 issued by Uganda Coffee Development Authority valid from 2017 to 2019 and no evidence was brought to disapprove the asserted fact

Counsel for the 2<sup>nd</sup> & 3<sup>rd</sup> defendants stated that DW1 testified that under his role as the regional coffee extension officer of the 2<sup>nd</sup> defendant, he is knowledgeable in coffee seedlings matters by virtue of his employment, work experience and training. He testified that after stopping the motor vehicle of the plaintiffs, he inspected the vehicle and discovered that it was carrying coffee seedlings together with eucalyptus seedlings. He testified that the coffee seedlings were not fit and mature enough for planting since they were less than 3 pairs of leaves and was not being transported during planting season. Counsel submitted that these facts were never contradicted in cross examination by the plaintiffs.

That DW1 further testified that the plaintiffs did not give him details upon inquiry where the seedlings were being taken and from where it was originating from and

it was because of this that they requested them to take the coffee seedlings to police to allow them produce the relevant clearance and documents pertaining to the coffee seedlings.

Counsel submitted that the source of the coffee seedlings was only disclosed by the plaintiffs at the time of filing the suit long after the incident and at the time of their inception, the source was unknown. He therefore submitted that the DW1 reacted reasonably by requesting for the vital documents to be produced before the seedlings could be allowed to proceed well within the mandate of the 2<sup>nd</sup> defendant to stop the transportation of coffee seedlings whose source was not known at the time. He therefore prayed that this issue be answered in the affirmative.

### *Analysis*

The standard of proof in civil cases is on a balance of probability. It is the law of evidence that he who alleges as to the existence of facts must prove so. **Section 101-103 of the Evidence Act** is very instrumental and clear on this. The plaintiff therefore has the burden to prove the case on a balance of probability.

The evidence on record by the defendants is that the coffee seedlings were suspected to be illegally transported from one coffee region (Central) to another coffee region (Northern) where upon it was discovered they were Arabica and Robusta coffee seedlings combined. The said coffee seedlings were not fit for planting as other were less than three pairs of leaves and there was lack of clearance from RCEOs.

The 2<sup>nd</sup> defendant had a duty to investigate the source of the said coffee seedlings and make a report about their suitability and substantiate the observations made by the 3<sup>rd</sup> defendant. The coffee seedlings remained impounded and there was no justified basis for the continued holding onto the coffee seedlings without any proper report to prove the unfitness or poor standards of the coffee seedlings. The actions of the 2<sup>nd</sup> defendant must be supported by lawful exercise of power and for the purpose for which they were established under the law.

The power of the 2<sup>nd</sup> defendant is not disputed since it derives its mandate from the statute - Uganda Coffee Development Authority Act to ensure that the quality and standard of coffee planting materials and seedlings. The defendant is mandate to take reasonable action in ensuring that the quality of coffee in the country does not drop through unscrupulous persons not licenced by them. The 2<sup>nd</sup> defendant in this case slept on duty when they failed to investigate or make any report about the impounded coffee seedlings and or to prosecute the plaintiffs if at all they were in breach of the law. They merely left the coffee seedlings to waste away at police until when the matter was brought to court for recovery of the recovery of the loss occasioned and never attached any report about their findings on their defence of in court during the trial.

The 1<sup>st</sup> defendant who impounded the truck was not assisted in their investigations since the 2<sup>nd</sup> defendant possessed specialised skills in determining the legal breach by the plaintiff. During cross examination, DW1 testified that he did not know whether the 2<sup>nd</sup> defendant made a report and that he did not have a verification report on the quality of the seedlings. He further testified that he did not find out whether the coffee seedlings were bought from a licensed owner.

I find it difficult to believe the coffee seedlings were not of fit and proper quality without any evidence adduced by the defendants to direct this finding. The defendants clearly impounded the plaintiffs' seedlings on allegations that they were not of good quality and sent these to the police station. There is however no report that was ever made by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants who have the mandate to ascertain whether the seedlings were of quality or not. In fact, there is no evidence that any investigations being carried by the defendants to arrive at this conclusion.

**Section 102 of the Evidence Act** is very clear that the burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side. The plaintiffs adduced evidence to show that the seedlings being transported were purchased from a licenced farmer. In the circumstances, the burden shifted to the defendants who, having impounded the plaintiffs' vehicle on allegations of carrying coffee seedlings which were poor for plantation and from an unknown source, had to prove such allegations against the plaintiffs.

I am not satisfied that the defendants have discharged the burden to prove that the coffee seedlings were unfit for plantation or from an unknown source.

This issue is therefore answered in the negative.

*Whether the defendants wrongfully and illegally detained property belonging to the plaintiffs.*

Counsel for the plaintiffs submitted that the defendants wrongfully and illegally detained property belonging to the plaintiffs. He relied on the case of *Quick Cargo Handling Services Ltd vs Iron Steel Ware Ltd & 2 Ors HCCS No. 328 of 2002* where the court observed that the tort of detinue arises when the defendant detains the chattels or goods after a demand has been made for their restoration to the plaintiff. In fact, order for a claim upon the tort of detinue to succeed, the plaintiff must prove that the defendant detained the chattel after the plaintiff had demanded for its restoration. Failure to prove that important element of detinue will hinder the plaintiff's success.

He stated that the plaintiffs made several demands for the release of the property but the defendants refused to have the vehicle released. Counsel relied on PEX 11, a demand letter to the managing director of the 2<sup>nd</sup> defendants demanding for compensation for the coffee and eucalyptus seedlings and release of the impounded vehicle. He further stated that PEX19 confirmed that the 2<sup>nd</sup> plaintiff's motor vehicle which was carrying the 1<sup>st</sup> plaintiff's coffee and eucalyptus seedlings was being held by police after being intercepted by the 3<sup>rd</sup> defendant.

For the 1<sup>st</sup> defendant, it was submitted that the plaintiffs' property was lawfully impounded by the Uganda police force. Counsel submitted that the 1<sup>st</sup> Defendant impounded the coffee and eucalyptus seedlings along with the motor vehicle Registration No. UAS 856B based on complaints lodged by the 2<sup>nd</sup> Defendant (UCDA). The investigation into the matter is currently on-going and incomplete. He further submitted that the Uganda Police Force maintains a duty to prevent and detect crime.

Counsel further relied on Article 212 of the Constitution which outlines the function of the Police Force to include; protecting life and property, preserving law and order, preventing and detecting crime; and cooperating with civilian authority and other security organs established under the Constitution, as well as the general population. He further cited Section 4 of the Police Act which specifies the functions of the Police Force.

As far as the tort of detinue is concerned, counsel while relying on Clerk and Lindsell on torts, 18<sup>th</sup> edition and the case of Mpandi vs Prism Trading HCCS 230 of 2013 submitted that normally, the action only lay against a Defendant who was in possession of the chattel.

He therefore submitted that the tort of detinue arises when the defendant detains the chattels or goods after a demand has been made for their restoration to the plaintiff and failure to prove that important element of detinue will hinder the plaintiff's success.

The plaintiffs' argument is that the 2<sup>nd</sup> defendant through DW1 impounded the vehicle in question. However, all throughout the testimony of the DW1 and the pleading of the parties, it is clear that the 2<sup>nd</sup> defendant never impounded or was interested in the motor vehicle nor the rest of the goods being transported. Counsel submitted that DW1 testified that it was the coffee seedling that drew his attention and led to stopping the vehicle in question. It was therefore submitted that the plaintiffs failed to prove detention against the 2<sup>nd</sup> defendant and that it did not detain any chattel belonging to the plaintiffs, save for the coffee seedlings.

The 2<sup>nd</sup> and 3<sup>rd</sup> defendants further submitted that the other ingredient to complete the tort of detinue is failure to restore the goods after a proper request for restoration of the detained goods has been made. He noted that the plaintiffs submitted that they made several demands for the release to the motor vehicle together with its contents but the Defendant refused to release the same. The Plaintiffs relied on PExh.11 which is a demand letter written on behalf of the 1<sup>st</sup> plaintiff and addressed to the 2<sup>nd</sup> defendant.

Counsel further noted that the above letter was addressed to a wrong person as the plaintiffs knew very well that the motor vehicle was detained at Kabanyoro police station by the Uganda Police but chose to demand it from the 2<sup>nd</sup> defendant. Nonetheless, the 2<sup>nd</sup> defendant wrote in response to the above demand and informed the plaintiffs that the motor vehicle and the goods it was carrying were detained by the 2<sup>nd</sup> defendant. That the plaintiff never made any proper demand at all for the restoration of the alleged detained chattels and as such, the claim in detinue against any of the defendants.

Counsel further submitted that the plaintiff never made any attempt to demand for the release of the motor vehicle and the goods from the police who were in custody and it would be unfair to blame the 2<sup>nd</sup> defendant who does not have any control of the police. He therefore submitted that in the absence of a valid demand, the claim in detinue fails and prayed that the court the 2<sup>nd</sup> defendant not liable in detinue.

*Analysis.*

I have carefully considered the evidence on record, the pleadings and submissions of learned Counsel for the Plaintiffs and Defendants. The Plaintiffs' cause of action is in detinue or detention of goods and for recovery of property, conversion, loss of earning, special and general damages in the circumstances. It is important to understand the principles of law on detinue.

Detinue consists in wrongful withholding of the plaintiff's goods. It does not matter whether the person or the wrong doer, that is detainee of the goods obtained possession of the detained goods lawfully or illegally or by seizure. What is relevant is the wrongful retention of the chattel after demand. It is therefore material that, to sustain an action in detinue, there must be demand by the plaintiff and on receipt of this notice the persistence in keeping the chattel by the defendant would give rise in detinue. See *Nalubega Ruth t/a Nyonyi Traders v DL Properties Ltd & Another HCCS No. 294 of 2021*

The essence of 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. The goods must be in the custody of the defendant at the time the demand for them is made before an action in detinue can succeed. The cause of action in detinue is the refusal of the defendant to return the goods to the plaintiff after the plaintiff have a made a demand for them. A claim for detinue would fail if at the time the plaintiff made a demand the goods were not in the defendant's actual possession. In such a case, the plaintiff might have a cause of action in conversion but definitely not detinue. The plaintiff can still sue in detinue and succeed if he is able to show by credible evidence that the defendant wrongfully or improperly parted with possession of the goods before the plaintiff made a demand for them. *See Enterprise Bank Ltd v Aroso (2004) 3 NWLR (pt 1394) 257 (SC)*

According to Stroud's Judicial Dictionary of Words and Phrases 2000 edition, "detinue" also generally phrased as "detention of goods" is an action that lies against him who having goods and chattels delivered to him to keep, refuses to re-deliver them. According to **Winfield and Jolowicz on Tort 9<sup>th</sup> Edition at page 418**, the plaintiff must prove that he is entitled to immediate possession of the chattel and in case of any defect in his right to immediate possession, the action must fail. Secondly the plaintiff must prove that the defendant had detained the chattel after the proper demand had been made for its restoration. From the authorities it is essential for the plaintiff to prove that he delivered the chattels to the Defendant. Secondly he has to prove that he made a demand for the chattels and the Defendant refused to deliver them to him.

It is therefore important to note that detinue consists a wrongful withholding of the plaintiff's goods and is the proper action to bring if the plaintiff wishes to recover possession of his goods, and not merely their value. It is distinct from conversion which is a single wrongful act, and the cause of action accrues at the date of conversion. Detinue 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.

The Court of Appeal in the case of *Standard Chartered Bank (U) Ltd & Anor vs AG Civil Appeal No. 3 of 2003* held that to sustain a suit in conversion and detinue, there has to be a seizure of goods belonging to another person or dealing with the

goods of a person so as to constitute unjustifiable denial of his/her right in them or an assertion of rights inconsistent with the owner's rights. Such seizure should ultimately be followed by a demand by the owner and a refusal by the defendant to hand over the same.

From the evidence on record, it is the testimony of PW1 that the 1<sup>st</sup> and 2<sup>nd</sup> defendants through their agents impounded the plaintiff's motor vehicle UAS 856B which was transporting coffee and eucalyptus tree seedlings. The said property was taken to Kabanyoro police station upon complaint filed by the 2<sup>nd</sup> defendant. Indeed, this was corroborated by the 2<sup>nd</sup> defendant's witness, DW1; Kagimu Richard who testified that the plaintiffs' motor vehicle which was carrying coffee and eucalyptus seedlings was impounded and taken to the police station for purposes of carrying out an investigation over the quality of the coffee and its source.

In the circumstances, it is not in dispute that the property was delivered to the defendants. The plaintiffs allege that they made several demands for the property to be released by the defendants but all in vain. Indeed, the plaintiffs produced a demand letter PEx.19 that was addressed to the 2<sup>nd</sup> defendant with the 1<sup>st</sup> defendant in copy seeking for the release of the property. However, the defendants did not heed to the letter as the 2<sup>nd</sup> defendant in response noted that it noted that it was not liable for the actions of the police who impounded the plaintiffs' property.

However, it is important to note that the plaintiffs' property was impounded by the 1<sup>st</sup> and 2<sup>nd</sup> defendants' officials upon complaint of the latter on the quality of the coffee seedlings transported. DW1 testified in his cross examination that upon impounding and delivery of the vehicle, the 2<sup>nd</sup> defendant took over and made investigations. However, he was unable to substantiate whether there was a report ever made and whether the plaintiffs were prosecuted. The 2<sup>nd</sup> defendant therefore cannot distance itself from the actions of the 1<sup>st</sup> defendant which only acted upon the former's complaint and instructions.



Furthermore, the 1<sup>st</sup> defendant did not adduce any evidence to show that there were any investigations made as to the complaint by the 2<sup>nd</sup> defendant in respect of the quality and source of the plaintiff's coffee nor evidence to show that the investigations were still on-going and incomplete as alleged. The defendants do not dispute impounding and taking possession of the plaintiffs' motor vehicle and coffee and eucalyptus seedlings as per the evidence on the record.

The plaintiffs' witnesses PW1; Kibasha Wilber and PW2; Ssenyondo Jesse both testified that they demanded for the release of the motor vehicle and the seedlings thereon from the 2<sup>nd</sup> defendant's officials who directed them to go to the police. At the police, they were ordered to go back to the 2<sup>nd</sup> defendant and eventually told that their property could only be released by court order. This evidence was uncontroverted by the defendants.

Indeed, counsel for the 1<sup>st</sup> defendant had rightly stated the role and duty of the police in the circumstances under Article 212 of the Constitution and section 4 of the Police Act. He further cited the case of *Nabaasa Victory vs Edward Ochom & Anor HCCM No. 419 of 2017* where it was held that once approached with a complaint, the police must investigate the conflicting claims which inevitably interfere with the exclusive enjoyment of the property. The court stated that:

*"The police are mandated to maintain law and order, and any action undertaken in line with their core mandate under Article 212 of the Constitution cannot be interpreted as an infringement of parties' rights. Once approached with a complaint, the police must investigate the conflicting claims, which inevitably interferes with the exclusive enjoyment of the property. In such circumstances, the actions of the police officers cannot be deemed to have infringed upon the applicants right to property."*

The police was executing its mandate when they impounded the truck with coffee seedlings and eucalyptus trees since there was a genuine complaint by the 3<sup>rd</sup> defendant as contended at the time. It had to await the investigations from the 2<sup>nd</sup> defendant which they failed to do or make any report in respect of the matter. The 2<sup>nd</sup> defendant had a duty to remove the impounded truck as the complainant to investigate the allegations of substandard coffee seedlings.

The 2<sup>nd</sup> defendant cannot absolve themselves from liability by contending that the said coffee seedlings and eucalyptus tree seedlings and the truck were in custody of the police. The said property was at police on a clear complaint by the 2<sup>nd</sup> defendant through its employee-3<sup>rd</sup> defendant. The 2<sup>nd</sup> defendant had complete authority over the impounded truck with the items there on and ought to have given clearance of the vehicle from the police. Although the police failed in its duty to conclusively investigate the matter and cause the release of the vehicle, I would to this extent absolve them of liability, because it was the 2<sup>nd</sup> defendant who used them and failed to give them guidance on what to do with the impounded truck with the coffee seedlings after they failed to investigate or conclusively deal with the matter.

The initial impounding of the truck upon a complaint by the 2<sup>nd</sup> and 3<sup>rd</sup> defendant was lawful and upon failure by the complainants conducting any investigations in their complaint about the poor and substandard coffee seedlings of the 1<sup>st</sup> plaintiff within a reasonable time it became wrongful. There was a genuine complaint by the 2<sup>nd</sup> and 3<sup>rd</sup> defendant and their *laisse faire* approach in not investigating the matter conclusively with a report made it an abuse of authority and unfairly burdened the police with a complaint which remained unsubstantiated with concrete evidence.

From the evidence on the court record, I find that the plaintiffs have fulfilled the conditions necessary to prove the tort of detinue when they failed to have the truck and goods released. I therefore find the 2<sup>nd</sup> and 3<sup>rd</sup> defendants liable in detinue.

This issue therefore succeeds.

### ***What are the remedies available to the parties?***

#### *Special Damages*

The law relating to special damages is settled. The guiding principle is that special damages must not only be specifically pleaded but they must also be strictly proved.

They must cover tangible harm that can easily be translated into monetary terms. The burden of proof as mentioned earlier; rests on that person who would fail if no evidence is adduced to prove an alleged fact. Special damages being compensatory, the plaintiff has the burden to adduce evidence proving them. In a case where there is loss of earnings, the plaintiff must adduce evidence of the lost earnings. Strict proof is not restricted to documentary evidence only and in some cases, evidence of a person who received or paid or testimonies of experts conversant with matters of the claim can suffice. See; **Stanbic Bank Uganda Ltd vs Sekalega Civil Suit No. 18 of 2009.**

The 1<sup>st</sup> plaintiff led evidence of an acknowledgement receipt and payment receipt for the coffee and eucalyptus seedlings at Ugx. 46,000,000/= and Ugx. 2,000,000/= respectively to show that he incurred the amount for purchase. He further adduced evidence of the costs of hiring the 2<sup>nd</sup> plaintiff's motor vehicle this being Ugx. 500,000/= per day.

Therefore, the 1<sup>st</sup> plaintiff is awarded special damages to the tune of UGX 46,000,000/= for the coffee seedlings, Ugx. 2,000,000/= for the eucalyptus seedlings and Ugx. 500,000/= as hire price of the motor vehicle as prayed for and proved.

The 2<sup>nd</sup> plaintiff sought special damages for loss of earnings for the period the period the vehicle was in the custody of police. This court does not agree that loss of earnings is special damages but rather it could be recoverable as general damages. It would be extremely speculative to award a sum of 423,000,000/= as a cost of the hire per day at 500,000/=.

#### *General damages*

As far as 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. 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.

The 2<sup>nd</sup> plaintiff indeed suffered loss on the continued detention of the vehicle and ought to be compensated for the same loss coupled with the repairs made on the said motor vehicle. The plaintiffs must be put in the position they would have been had he not suffered the wrong of seizure and impounding of the motor vehicle with coffee seedlings. General damages are the direct probable consequence of the wrongful act of the defendant complained of and include damages for pain, suffering and inconvenience and anticipated future loss.

In the circumstances, I find that the 2<sup>nd</sup> plaintiff has discharged his duty to prove damages and injuries as a result of the defendants' actions.

The 2<sup>nd</sup> plaintiff is awarded a sum of UGX 80,000,000/= as general damages against the 2<sup>nd</sup> defendant.

The special damages awarded to the 1<sup>st</sup> plaintiff shall attract interest at 15% per annum from the date of the cause of action until payment in full.

The general damages awarded to the 2<sup>nd</sup> plaintiff shall attract interest of 20% per annum from the date of judgment.

The plaintiffs are awarded costs of the suit.

I so order.

**SSEKAANA MUSA**

**JUDGE**

**12<sup>th</sup> January 2024**