THE SUPREME COURT OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO (CORAM:

ODOKI, J.S.C. ODER, J.S.C., KAROKORA, J.S.C.)

CIVIL APPEAL NO.26/95

BETWEEN

UGANDA REVENUE AUTHORITY…… APPELLANT AND

STEPHEN MABOSI……RESPONDENT

(Appeal from Judgment of the High Court at Kampala (Mukanza, J) dated 31st January

in

Civil suit No. 699/93)

JUDGEMENT OF KAROKORA, J.S.C.

The appellant was the defendant before the high Court. The respondent was the plaintiff who filed a suit claiming against the appellant for the sum of Ug. Shs. 22,703,000/= with interest thereon, being the value of goods/lubricants taken into possession and custody of the appellants and misappropriated by its servants and/or agents. The facts constituting the cause of action were that on or about 19th day of November, 1992 in the absence of the respondent, one Okello, a servant and/or agent of the appellant with others unknown to the respondent, also servants and/or agents
the appellant did go to the respondent's premises removed and took into possession goods/lubricants of the respondent. The goods were taken allegedly on the grounds that they were uncustomed. The goods were evidenced by the Seizure Notice which was exhibited as Exh. P.1.

It was not disputed that goods/lubricants were seized from the premises of the respondent on 19th of November, 1992 on the ground that they were uncustomed goods.

However, what was in dispute was the quantity of goods seized from the premises of the respondent. The respondent claimed that the goods which were seized included 500 cartons of half litre tins among others. He contended this was reflected in the Seizure Notice Exh. P1. Eventually after payment of due taxes and fines the rest of the items were released which

included 94 1/2 boxes of half litre oil, see Exh. P7 which indicated a short-fall of 405 1/2 litre boxes of half litre oil, which is now subject of the suit/appeal.

After hearing evidence from both sides and submissions of both Counsel, the learned Trial Judge accepted respondent's case that 500 boxes of half litre oil had been seized and taken for custody by the appellant. He rejected Oral evidence which sought to vary Exh. P1. He further accepted that out of 500 half litre boxes of half litre oil, 94 1/2 half litre boxes had been returned to respondent as shown by Exh. P7. He therefore held that not all that was seized that was returned.

As regards remedies, the learned Trial Judge allowed 405 half litre boxes of oil and multiplied the amount by Shs. 56,000/= per carton which came up to Shs. 22,708,000/=. He awarded 40% interest and costs of the suit.
The defendant was dissatisfied, and hence this appeal. The grounds of appeal are as follows;-

1. The learned Trial Judge erred in holding that the burden of proof of the quantity of goods in dispute lay upon tile Defendant;,

2. The learned trial Judge erred in law in holding that a mistake on a document cannot be pointed out even by the author thereof;

3. The learned Trial Judge in choosing to rely solely upon the disputed document (Exh. P1) failed to evaluate other evidence produced by the Defendant and particularly the following:

    (i) failure to evaluate the evidence showing that the size of the premises could not have accommodated the volume of the alleged 500 boxes in addition to the other goods in the premises not. in dispute;

    (ii) failure to evaluate the evidence showing that the Tata lorry that was used to transport the seized goods could not have accommodated the alleged 500 boxes in volume and weight.

4. The learned trial Judge, in holding that all the tax due on the goods seized as per disputed Exh. P1 were paid for ignored the evidence of the quantity of goods paid for as per Exh. D7;

5. The learned trial Judge failed to consider that even if any alleged balance of goods had existed, the respondent would not have been entitled to claim it from the appellant as he had not paid tax for them and they would still be uncustomed goods;

6. The learned trial Judge having made any award at all, acted unjustifiably in awarding interest at the rate of 40% which is not the Court rate.

At the hearing of the appeal all the Six grounds were argued, but the major one on which the entire appeal hinged was whether the appellant could call evidence to vary the contents of a document which the appellant had written acknowledging receipt of the goods contained in the document.

The learned trial Judge rejected the defence evidence to the effect that there was a mistake when DW1 issued the seizure notice, Exh. P1, where he stated that 500 half litre boxes of oil had been seized.

The defence were arguing that the 500 half litre were tins but not boxes. In rejecting defence evidence the learned trial Judge relied on Section 90 of the Evidence Act. Both Counsel on each side submitted on this ground and in my opinion, the learned trial judge was perfectly correct to reject extrinsic evidence sought to be adduced on behalf of the appellant to vary or alter the contents or the seizure notice Exh. P1. The principle under Section 90 of the Evidence Act is that when the terms or contract or grant or any other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or disposition of property or of such matter except the document itself or secondary evidence or its contents in cases in which secondary evidence is admissible.

The Court of Appeal for Eastern Africa in Sheikh binti Ali's case (1958) EA 623, cited with approval in Sheik Muhammad Ibrahim v Bibi Biriam 1929) 8 Pat at page 489:

> "It is true that a valid Wakf can be created without document; but when the terms of disposition of property have been reduced to the form of a document, under Section 91 or the Evidence Act, no evidence can be admitted in proof of the terms of such disposition except that document itself or secondary evidence thereof."

In Fenekasi Semakula v Ezekeli Mulondo Civil Appeal No. 4 of 1982 U/C.A the Court disallowed extrinsic evidence sought to be adduced on behalf of the defendant/appellant to prove that a Statutory Notice to quit had been withdrawn.

In the instant case Section 159 of the East African Customs & Transfer Tax Management Act required Notice of Seizure of goods suspected to be uncustomed to be given to the owner of the seized goods.

Therefore in my view, since the number of boxes of half litre engine oil was duly given by the appellant's servants in conformity with the legal requirement of the above law, they are estopped by Section 90 and 91 of the Evidence Act (Cap 43) from disputing the quantity in Exh. P1. No amount of oral evidence would change the position, since they can't plead coercion, fraud or illegality, in view of the circumstances prevailing at the time of the seizure and when the Seizure Notice was written. I would in the circumstances uphold the Trial Judge's conclusion that no oral evidence would be admitted to vary the contents of Exh. P1.

The above disposes of the 2nd and major ground on which the appeal hinges.

I shall next deal with the first ground of the Memorandum of Appeal. I have gone through the evidence and conclusion made by the learned Trial Judge on the issue, and there is no doubt that, if the appellant were challenging the correctness of the contents of Exh. P1, then the burden shifted to them to prove how much stock of the engine oil was taken away from the respondent. I could see from the evidence that the appellant laboured to prove that the engine oil seized from the respondent was the amount that was returned to him, but I must say that their attempt was rightly rejected in my view, since the oral evidence would not be admissible in the circumstances, under Sections 90 and 91 of the Evidence Act.

On the 3rd ground of appeal, I have gone through the entire evidence and the judgment of the learned trial Judge concerning this issue, and .1 must state chat his conclusions were unassailable.

I must add that it would appear that the defence evidence on the mode of transport and the size of the room/stores where the seized oil had been kept came in as an after-thought, after the respondent had closed his case. Otherwise I would have expected the defence to confront PW1 and PW2 in cross-examination and challenge them, and if necessary, in order to

disprove them, request for the Court to visit the locus where those 500 boxes of oil had been stored and seized from. It is surprising to see that even PW2 who was present when seizure was effected was not asked in cross-examination how many trips were made in taking away the seized goods.

I must add that the above was a serious omission on me part of the defence. And it has been held by this Court In Criminal Appeal No. 5/1990, James Sawoabiri & Fred Musisi v Uganda (unreported) that:

> "an omission or neglect to challenge he evidence-in-chief on a material or essential point by cross-examination would lead to the inference that the evidence is accepted subject to its being assailed as inherently incredible or probably untrue."

Although the above principle was cited in Criminal Case, it is a common sense principle which would apply in all cases. In my view, the calculation by the defence of the size of the store from which oil was seized, would not destroy the case for respondent. The use of a Tata lorry in transporting the seized goods is not enough to strengthen defence case. As PW2 stated in her evidence, she had seen 3 vehicles park infront of the petrol station. She was never cross-examined as to whether those vehicles were used in transporting the seized goods or not.

In view of the above, the above ground would fail.

Coming to the 4th ground of appeal, I find no merit in it, because clearly, if there is evidence that he never paid for all the oil that was seized, then the appellant would be at liberty to levy tax where tax is due, before the goods are released to respondent.

As regards the 5th ground of appeal, it appears from the evidence that where there was evidence that no tax has been paid, the respondent was required to pay the tax due and after payment, the goods were released. I dont see why there should be exception in me part of the seized goods, in any case it the law says he cannot take such goods from the appellant then that would be different from saying they never seized respondent's 500 boxes of half litre engine oil. This ground would also fail.

Lastly, I shall come to the interest rare of 40% which was awarded we were referred to the case of J.K. Patel v Spear Motors Ltd, supreme Court No.4/91 (unreported), where 30% interest rate was awarded by this Court. In the instant case there was no evidence led to support respondent that he had secured a bank loan/draft at 40% interest rate. In the circumstances, I think the learned Judge ought to have awarded what was reasonable. However, in my considered opinion, I think 40% interest rate was very excessive and out of proportion to the current bank interest rates.

In the circumstances, I would dismiss this appeal except as regards costs, I would, however, reduce the interest rate awarded by the Trial Judge from 40% to 30%. I would award the respondent four fifth of the costs of this appeal.

Dated at Mengo this 20th day of September 1996.

A.N. KAROKORA,
JUSTICE OF THE SUPREME COURT

JUDGMENT OF ODER

I have had the benefit of reading in draft the Judgment of Karokora, J.S.C., with which I agree.

The appeal should be dismissed, except that the interest on the decretal amount should be reduced to 30% p.a. The costs of the Suit and the appeal should go to the respondent.

Dated at Mengo this 20th day of September 1996.

A.H.O. ODER,
JUSTICE OF THE SUPREME COURT

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MASALU MUSENE
REGISTRAR SUPREME COLJ.

JUDGMENT OF ODOKI. J.S.C.

I have had the benefit of reading in draft the judgment of Karokora, J,S.C., and I agree with it. As Oder, J.S.C., also agrees, there will be an order in terms proposed by Karokora, J.S.C.

Delivered at Mengo this 20th day of September, 1996.

B.J. ODOKO,
JUSTICE OF THE SUPREME

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MASALU MUSENE

RGISTRAR SUPREME COURT.