

THE REPUBLIC OF UGANDA

IN THE HIGH OF UGANDA HOLDEN AT FORT PORTAL

CIVIL SUIT NO. DR. MFP 13/1988

ERISA KAHERU ::: PLAINTIFF

—versus—

FOODS AND BEVEAGES LIMITED ::: DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA.

JUDGMENT:

The plaintiff in this case filed a civil suit against the defendant company (in detinue) for the return to the plaintiff of all the properties listed in schedule here to or payment of the value thereof.

According to the plaint on or about November 1985 the plaintiff lawfully purchased a uniport at Mugurus Road Kasese. Town built on a land adjacent to the defendant's residential house at the said Mugurusi Road Kasese Town. On or about 1986 the defendant's employees in Kasese town, in the course of their employment, unlawfully entered the said uniport and forcibly took possession thereof including all the plaintiff's property therein. The said property and the value thereof were listed in the Schedule thereto. That despite the demands of the return of the said property to the plaintiff, the defendant had unlawfully retained and or unlawfully converted the said property and deprived the plaintiff the use and the ownership thereof.

He prayed that the court does orders for the return of the said property or their value plus the expenses incurred by him all amounting to shillings 1,180,000/=, Interest on the said sum at 40% p.a from 1st December 1986 till payment in full and costs.

In their written statement of defence the defendant company denied each and every allegation contained in the plaint as if the same were set out and traversed seriatim. The defendant company

averred that if at all the defendant's employees committed the acts complained of then it was not during the course of their employment and they were acting on their own.

The facts briefly were that the plaintiff's uniport together with its contents were taken over by the defendant's employee and or servant. The properties therein were removed and taken away to the defendants stores. He sued the defendants at the RC courts of the area after the defendants had refused to return his Properties and judgment was pronounced in his favour. As a result some properties like the uniport, calabash and 2 tables were returned to the plaintiff. Later on some negotiation were commenced between the plaintiff and the defendant's advocates. A sum of shillings 687,250/= shillings was agreed upon as the figure that would properly compensate the plaintiff as damages for property lost and spoilt plus costs.

The plaintiff refused to accept the sum agreed upon between the counsels representing him and the defendant company. He abandoned his first lawyer who had featured in the negotiations and engaged another who decided to proceed with the case. Meanwhile shillings 670,000/= was paid into court by the defendant.

The evidence of PW1 the plaintiff shows that he used to live in Kasese town council in his uniport just next to the land of the defendants servants where they had a residential house. They were neighbours. On one occasion the defendant's employees came and claimed that the uniport plus its contents belonged to them. They took all the properties in the uniport together with his cotton which he had just picked. The uniport was his collection centre. His testimony further showed that he had the following properties in the uniport.

1. Leather sofa set. He had paid shillings 45,000/= for the set. He could not recall when he bought it. He saw a similar set in Kampala costing about 150,000/= shillings.
2. Three big saucepans. He bought this in Kasese town at the cost of shillings 15,000/= per saucepan. Total cost was shillings 45,000/=. He had no receipts for the same.
3. Two small saucepans. These also were purchased from Kasese. He could not recall when that was done. The two saucepans cost him shillings 2,500/=.

4. He further bought 2 other saucepans at shillings 6,000/=. He had seen those saucepans. He could not tell their current price.
5. One wooden cupboard costs shillings 15,000/=. The current price for the same cupboard is 170,000/= shillings.
6. A mat valued at shillings 4,000/= when he bought it. He could not recall when he bought the same but was reliably informed that the current price of such mat fetches about shillings 8,000/=.
7. Spring bed at the cost of shillings 14,000/=. He bought the same from Kampala. He did not know the current price
8. A mattress cost him about 8,000/=. Its current price was about shillings. 35,000/=.
9. A pair of bed sheet which cost him shillings 7,000/=. He could not recall when he bought the same. A similar pair of bed sheets cost shillings 11,000/= according to the current price.
10. One woolen blanket. He bought the same from Kampala at the cost of shillings 6,000/=. He did not know its current price. A set of six chairs bought at shillings 3000/= each. Then cost him between 10,000/= and 11,000/= shillings.
11. He had some cotton in the uniport and in the garden. The garden measured about 20 acres all covered with cotton. Some cotton got spoiled because the collecting centre which was his uniport had been occupied. He had about 650 kilograms of cotton. Each kilogram used to cost 120/= at that time. The current price per kilogram was shillings 340/=.

When foods and beverages (the defendant company) took properties he contacted his lawyers Nyakabwa & Co. Advocates. The latter contacted the defendant company giving it 7 days notice to vacate his uniport and to return his properties as per Exhibit P1. The defendant's servant refused to leave the uniport. They wrote back saying that the uniport belonged to them and about the properties that were in the uniport they referred him to the police. He was advised by the

defendant that he could take court action against the defendant company if he wished (exhibit 12 refers). Apart from contacting the advocate he also took his complaint to the RCI of the area. The latter wrote a letter referring the matter to the RCII of the area as per exhibit P3. At the RCII court the matter was entered into. The defendant company was represented at the hearing and finally judgment was entered in his favour as per exhibit P4. As a result he got back the uniport, 2 tables and calabash. Later he filed a suit here against the defendant company. Besides using the courts and the RCs. PW1 also contacted the police who assisted him. He went with the police to the defendant company. He was together with Chairman RCII. The manager of the defendant company told him that the cotton had been burnt. He refused to accept properties which had been exchanged and or damaged. He concluded that he accepted the 2 tables, a calabash and the uniport.

When cross examined (PW1) replied that he lived in the uniport. He was at home in the village when the properties were being removed. He went and reported to the police. He did not know who had removed his properties. It took him a month when making enquiries. He was advised to take a wheel barrow and remove the properties. He could not comply because he had ... to the RCs in June, 1988 two years after the proprieties had been taken. That the case took two years with the RCII to get finalized. He could not have refused to take the properties if they were in good condition. He did not refuse to take the properties because he wanted to claim much money from the defendant company. That the value of his goods were bought in old currency. He used to heap his cotton on top of the properties and slept on top of the same and cooking was carried on outside. The children were sleeping elsewhere but that the cotton did not have much weight to affect his properties. He could not raise money so that he could rent a house in order to store his properties. He could not also afford to raise money to rent house or accommodation.

Pw2 was a police Constable on guard at the defendant's branch at Kasese. He was called upon by his boss one Mr. Opar who had disappeared to go and witness the handing over of the properties that had been in the uniport. He together with the Zonal Manager of the defendant company (DW2) went into their stores (the defendant's store). PW1 was also present. The following properties were in the stores:- One old cupboard, two tables medium size, a torn, a mat, one broken sofa set, a calabash, two chairs one broken. The evidence of PW2 further highlighted the fact that PW1 accepted and took with him two tables and a cupboard. He however rejected one

chair that it was broken and that the same did not belong to him. He did not know what properties he refused to take.

In cross examination PW2 replied that the cupboard was not damaged and PW1 said it was not his.

The evidence of PW3 the RCII of the area was to the effect that the latter entertained an action in which the plaintiff (PW1) was suing the defendant company for the return of the uniport. PW1 had reported to him that the uniport together with some properties were unlawfully taken by the defendant's servants and the Police. After getting the evidence from both sides he gave his judgment in favour of the plaintiff for the return of the uniport to the latter as shown by exhibit P4. The plaintiff mentioned to him some of the properties that were in the uniport like cotton, tables and bed sheets. His evidence further showed that there were two lists of properties allegedly removed by the defendant's servants. The first list was embodied in his Judgment and the other list was handed to him by the police as exhibit D3 refers.

For the defence DW1 a Police Officer was sent by his superior to come to Fort Portal and give evidence in the instant case. That it was one Baguma who booked out of the station as per reference No. 33 of the station Diary Exhibit D3 to go and investigate the cases. It was on 5th August, 1986 when one Baguma booked out as shown in EX.D3. Baguma was squeezed out of service and his whereabouts was not known to him. The former made a list of properties. He was together with the zonal Manager. The properties were recorded in exhibit D3 entry No. 67 of 12.8.86 (Ex.D3) and the plaintiff had reported a theft case.

The evidence of the Zonal Manager of the defendant company (DW2) was to the effect that he used to carry out the duties of marketing and the administration of the branch of the defendant company at Kasese. He did not have powers to represent the defendant company. That is the work of the legal secretary from their Headquarters of the defendant company. His predecessor briefed him about the instant case. He contacted the headquarters and it was decided that the case be settled out of court. A meeting was held in his office on 19.6.91 attended by the legal officer from the headquarters (Kampala), the Chief Inspector the plaintiff and the latter's Counsel. At the meeting it was agreed that the plaintiff be paid court shillings 687,250/=. That the figure

included properties allegedly found in the uniport, brokers fees, transport given to the police, costs and, lawyers fees. He reiterated that it was his predecessor who briefed him about the matter that the company broke into the uniport and took away some properties to their stores for safe custody. He produced a list of properties allegedly found in the stores Ex.D2. He physically went there to cross check. He found there a mat. He learnt that Kaheru had taken some of the properties from the stores viz, 2 tables and one calabash and had rejected the rest of the properties. He continued that he found a letter in the file written by his predecessor to the RCs explaining what had happened. It was dated 5.12.88 EX.D4. That in the stores the chairs were broken but the cupboards were in good condition. He took photographs of the items in the store (EXD3).

In cross examination he relied that on his own initiatives he went around Kasese in order to find out the prices of certain items they had agreed to compensate the plaintiff after the agreement to settle the matter out of court. In cross examination he listed the items as follows:-

Sofa set worth.....	100,000/= shillings
3 Big saucepans.....	36,000/= shillings
4 Small saucepans.....	12,000/= shillings
A cupboard worth.....	35,000/= shillings
One mat worth.....	3,500/= shillings
A bed worth.....	30,000/= shillings
A mattress worth.....	30,000/= shillings
Bed sheets worth.....	10,000/= shillings
Woollen Blanket worth.....	10,000/= shillings
Set of Chairs worth	18,000/= shillings
One padlock worth.....	
The cups worth.....	4,000/= shillings.
Seven spoons worth.....	750/= shillings.

Ten plates worth.....6,000/= shillings
 Lawyers fees.....70,000/=shilling
 One panga worth.....2,000/= shillings
684, 250/= shillings

Cotton found in the uniport was valued at..... shillings 150,000/=
 Then broker’s fees.....shillings 5,500/=
 Transport provided to police.....shillings 8,000/=
 Costs fixed at.....shillings150,000/=.

In re-examination he replied that the whole object of the settlement was the convenience of the company so that they did not have to come to court now and then. That the junior officer who represented the company at the RCII court would have been authorized by the defendant company. That the stores contained properties which did not belong to Kaheru. The prices he quoted were of a similar nature but Mr. Kaheru’s property were very old and they might have come to stores, when they were old.

At the commencement of the hearing of this case the following issues were framed.

- (i) What were the contents in that uniport,
- (ii) How much of that property was damaged or converted by the defendant’s servants.
- (iii) Whether the plaintiff took reasonable stops to mitigate the damages.

I now proceed to consider the first issue as to what were the contents of the uniport. While submitting on this issue Mr. Bakuza submitted that it was clear that the defendant’s servants were aware that the plaintiff was occupying the uniport and had property therein. That was why they decided to come when the plaintiff was away and that left a lot to be desired. If only been no litigation. That was done because of the defendants servant wanted to conceal some of the property of the plaintiff. That was done in collusion with the police and that was why the plaintiff reported to the police and gave the list in Exp I. The police did not investigate the matter. Having got two lists of the contents of the uniport the police could have made further investigation but

that confirmed collusion. DW1 was only reading the records. The court was not informed the reasonable steps fairly taken to get Baguma who recorded the list to come and testify. He prayed that the court rejects the list in Exhibit D2. Regarding the contents of the uniport that is to be found in the schedule to the plaint. That list was reflected in the list given by DW2 when there were reaching a statement. DW2 admitted the items were considered and given the prices as recorded. Those items recording to DW2 they were willing to compensate. As to what was in the uniport the learned Counsel invited this court to accept the evidence of PW1 and DW2.

Mr, Kwesgaho Counsel for the defendant on the other hand submitted that PW1 was an outright liar. He exaggerated his cost and in many instances he deliberately misled the court. He made a long list of things removed from the uniport contained in exhibit P1 (EXP.1). That was his own creation. No evidence was adduced that PW1 owned all those properties, why not call a neighbour or an independent person. He failed to produce evidence of receipts when he bought those things. And with regard to the fact that he slept on cotton and d 10600 kilograms of cotton no cotton could fit in such uniport but a big one. When the day came to settle matters out of court the plaintiff produced yet a wrong list not mentioned. He produced a list of 9 million shillings. What could we believe and not believe. The court should be guided by ExD2.

According to DW2 they received a list of properties that were in the uniport from the police. That list was reflected from the Station Diary EXD3, Station Diary Entry No. 67/12/86 EX. D2 is photostat of the EXD1. Those properties were recorded by one Baguma as per testimony of DW2. Baguma was not called as a witness to testify as to the properties allegedly removed from PW1's

uniport as per entry No. 67/12/86 from ExD3 (See Ex.D1 & D2). I do not therefore agree with the learned Counsel appearing for the defence that the court should be guided by what was in Ex. D1 with regard to some list of properties allegedly said to have been in the said uniport. Those other list did not form part of the pleadings and I see no good reason for considering them. The plaint shows that the plaintiff had a number of properties as shown in the schedule to the plaint. Those properties referred to in the plaint were also reflected in the evidence before this court except for the panga and ca1abesh which were not specifically pleaded. It is trite law that evidence must be consistent with pleadings and that the court is not permitted to reach a decision

based on a ground which was not pleaded. See **Captain Harry vs. Gespair Air Charles limited 1955—1956 XII EA CA 139.**

Consequently the panga and calabash could not be considered as among the properties in the uniport. Be that as it may the meeting where agreement was reached to settle matters out of court according to DW2 was that the plaintiff be paid out of court shillings 687,250/= and that that figure included properties found in the uniport. The properties which were allegedly said to have been in the uniport. I therefore agreed with the submission of the learned Counsel appearing for the plaintiff that in order to determine the properties that were in the uniport the court had to rely on the evidence of PW1 and DW2. The uniport had therefore the following properties:-

One sofa set

3 big saucepans

4 small saucepans

One wooden cupboard

One mat

One spring bed

One mattress

One pair of bed sheets

One woolen blanket

Six wooden chairs

And some cotton

From what has transpired above the first issue has been disposed. This now brings me to the second issue how much of the said property was damaged or converted by the defendants servant. On this issue Mr. Kwesigaho submitted that if there was any property damaged they were brought there when damaged like cotton piled over properties on which the plaintiff used to sleep.

On the other hand Mr. submitted that there was evidence that the plaintiff took back 2 tables and a calabash but the rest were damaged and converted by the defendant. The latter must therefore make good. It was explained by the plaintiff why he refused some properties in the import because they were not his. He did not take his cotton it was already spoiled. He did not take the chair it was broken. He did not take the property identified as his because they were damaged. Commenting on his learned friend's submission that the properties were damaged when taken Mr. Bakuza argued that the property were intact when removed. The defendant should have invited the plaintiff to come before they removed the properties.

Well PW2 was a police officer. He witnessed the handing over of the properties in the uniport by DW2 the zonal Manager of the defendant company to the plaintiff (PW1). He testified that the plaintiff took 2 tables and a cupboard. He rejected one chair that it was and the other that it was not his. Later in cross examination changed and testified that the plaintiff said the cupboard was not his. DW2 had a list of properties in their stores. He cross checked. He found there a cupboard and 2 chairs. There was also a mat. PW2 did contradicted himself in his evidence as to whether PW1 took the cupboard with him or not. The discrepancy in his evidence was not major and did not lead to deliberate untruthfulness. See Tajar's 167/1969.....unreported. In the end from the testimonies of PW2 end DW2 which was similar to that of PW1 over his particular issue I would agree with the submission of the learned counsel representing the plaintiff that PW1 took with him 2 *tables* and a calabash. I do not therefore endorse the submission of Mr. Kwesigaho that the properties were brought to the defendant's stores when they were already damaged. No evidence was adduced to that effect. The plaintiff was justified in rejecting the rest of the properties because they were either damaged or not his. Some properties could have been taken by other people other than the plaintiff because in his evidence DW2 informed the court that he stores contained properties belonging to other people other than the plaintiff. In conclusion the properties that are either damaged or converted by the defendants servant included one sofa set, three big saucepans, four small saucepans, a cupboard, one mat, spring bed, a mattress, one pair of bed sheets, one woolen blanket, cotton and chairs. This disposes of the second issue.

The third issue is what was the damage caused to the plaintiff because of the defendant's acts. The learned counsel appearing for the defendant company was not of much assistance over this issue. He was too pre-occupied about the credibility of the witnesses called to establish the

claim. That PW3 had no jurisdiction to entertain the matter over one million shillings and that his judgment should not be relied upon and that the judgment was not signed by all nine members of the RCII. That there was no proper service and summons could have been addressed to the co-operation secretary. That the judgment ExP4 was irrelevant. PW1 failed to adduce evidence where he got all those properties and that the plaintiff be compensated if any the value of properties when taken away.

On the other hand Mr. Bakuza submitted that the way the plaintiff's properties were taken and damaged and converted by the defendant caused him damage. That is what he was claiming the return of his properties or their value. He disagreed with his learned friend that if the plaintiff was to be compensated he should get the physical value of his property. The plaintiff surveyed the current prices of his goods and so did DW2. That was good guidance for the court to form the value to be awarded. The court should reject the defence and accept that the plaintiff picked the cotton from 20 acres and from one acre used to get 650 kilograms. The current value being 340 shillings per kilogram. He contended that items on schedule I & 2 were not proved by the plaintiff.

At common law a defendant held liable in detinue is ordered to deliver up the chattel to the plaintiff or to pay its value as assessed and in either event to pay damages for its detention. The defendant thus in effect had the option to return the chattel or pay its value. See **RC Scarth (1874) LR 10 Ch App. 234.**

My role here therefore is to determine the value of the property which were retained and or damaged by the defendant and the damages to be awarded to the plaintiff. The evidence revealed that both DW2 the zonal manager the defendant company and the plaintiff endeavored to survey the prices of the said properties. PW1 informed the court that he bought all those articles using the old currency. This too was taken into account when making the assessment.

DW2 testified that he tried to find out the prices of certain properties to compensate plaintiff after the agreement to settle matter out court had failed. For the sofa set that was assessed at shillings 100,000/= shillings. The plaintiff testified that he bought the said set in Kampala at the price of shillings 45,000/= out when he went around in Kampala shop a similar set could cost

150,000/= shillings. The sofa set was second hand and no invoice or receipt was produced by the plaintiff. I am of the view that the sofa set would be at shillings 100,000/= and the plaintiff as awarded that much for that item.

About the three saucepans, the plaintiff testified that the saucepans cost him shillings 4,500/=. He bought the same in Kasese town and he had used the same for half a year. He had receipt and could not recall when he bought them. DW2 checked in shops for similar saucepans. He had agreed to compensate the plaintiff 3,600/= shillings. I feel that 3,600/= as the value of three saucepans was reasonable. I would award the plaintiff that much.

The plaintiff had four extra saucepans. The first 2 cost him 2,500/= shillings. The plaintiff could not tell their current prices. On the other hand DW2 testified that similar saucepans cost 12,000/= shillings. That latter price was agreed to by the parties when efforts were being made to settle the matter out of court. That figure in my view was a reasonable one. I would award the plaintiff that much.

According to the plaintiff the cupboard cost him 15,000/= shillings and its current price was shillings 170,000/= shillings. He had used the cupboard for three years. DW2 testified that he had agreed to compensate the plaintiff 35,000/= shillings for the cupboard. I took note of the fact that the cupboard was not new. Its current price was 170,000/= shillings. I am of the view that figure of 35,000/= shillings as compensation for the same was rather very low. I am of the view that shillings 85,000/= shillings is a reasonable amount as compensation for the said cupboard. The plaintiff was awarded that much.

The mat cost the plaintiff 4,000/= shillings when new. According to him the current price of the said mat was 8,000/= shillings. He had used it for 2 months before the incident DW2 testified that he checked the prices for the mats in Kasese and found that such mat could cost 3,500/=. I am of the view that shillings 3,500/= was a bit too low in the light of what the plaintiff informed the court. The assessed value of the mat would be fixed at 5,000/= shillings and I would allow that figure.

The spring bed cost the plaintiff 14,000/= shillings when new. He had used the bed for only one year when the defendant servant took it away from him. He did not know its current price. DW2

testified that a similar bed could fetch 30,000/= on open market. That was the amount agreed between the parties when they attempted to settle the matter out of court. The plaintiff had no idea about the current prices of mattresses. I am of the view that 30,000/= shillings was a reasonable amount as cost of the said mattress. I will award the plaintiff that much.

The plaintiff paid 7000/= shillings for a pair of bed sheets when new. The current price for similar bed sheets were in the ranges of shillings 10,000/= to 11,000/= shillings. DW2 put the value of the 2 bed sheets at 10,000/= shillings. I award the plaintiff shillings 10,000/=.

The mattress cost the plaintiff 8000/= shillings. Before the incident he had used it for one year. Its current price was 35,000/= shillings. He did not have any receipt to that effect. DW2 agreed to compensate the plaintiff for the bed sheets at 30,000/= shillings. I would allow 30,000/= shillings as the assessed value of the said mattress.

One woolen blanket cost the plaintiff' 6,000/= shillings. He had no idea of its current price and the defendant company had assessed the value of the blanket at 10,000/= shillings. I will allow that figure and award the same to the plaintiff.

The plaintiff had six sets of woolen chairs which cost him shillings 3,000/= each thus making a total of shillings 18,000/=. The current price of each chair was 33,000/= shillings. DW2 had agreed to compensate him 18,000/= shillings. That amount was rather unreasonable taking into account the value of such chairs when not new. I am of the view that a figure of 25,000/= shillings would be the assessed value of those chairs, and I award that much to the plaintiff. Then there was the question of cotton that was in the uniport as already indicated above. According to the plaintiff the plaintiff pleaded that the cotton was worth 10600 kilograms and that the same was valued at 848,000/= shillings.

In his testimony the plaintiff testified that he had 650 kilograms of cotton at that time one 1 kilogram was costing shillings 120 (650 x 120) = 78,000/= shillings. PWI continued to testify that the current price per kilogram was shillings 340 (650 x 340) i.e. 221,000/= shillings.

DW2 the zonal manager recognized the fact that there was some cotton in the uniport and had agreed to compensate the plaintiff the loss of the same at 150,000/= shillings.

From what has transpired above the plaintiff failed to prove that he had 10600 kilograms of cotton in the uniport as pleaded by him but informed the court that infact he had 650 kilograms. I will take the last figure as the total weight of cotton that was in the uniport taken over by the defendant's servant. PW1 did not elaborate on the cotton left in the field. I am of the view that a figure of 150,000/= shillings as agreed to at the time when the parties tried to settle the matter out of court was reasonable and properly assessed as cotton that was in the uniport I would award the plaintiff that figure.

I do not agree with the learned counsel for the defendant that the plaintiff be compensated only the price of the articles when taken. Such assessment was difficult to make. I am of the view that prices as investigated by both DW2 and PW1 were the proper guidelines in assessing the values of the properties that were taken away. Similarly I do not agree with submissions of the same Counsel that PW3 as RC2 Chairman had he jurisdiction to entertain the matter as per judgment in Exp 4. Under the Resistance Committee Judicial Powers Statute 1988, first schedule Civil Disputes triable by Resistance Committee Courts) part 2 (1). The Resistance Committee Courts have jurisdiction to entertain Civil Suits connected with conversion and or damage to property and their jurisdiction is apparently unlimited. PW3 had therefore the requisite jurisdiction to entertain the case connected with the conversion of the uniport by the defendant servants. I do not also agree with Mr. Kwesigaho that the judgment that was passed at the RC2 court that the uniport be returned to the plaintiff had to be signed by all members of the Committee. There is no such requirement. That was not indicated in Section 15 (1) (a) of the said Statute under the heading "Record of Court Proceedings." But I agree with the learned Counsel's submission that exhibit P4 judgment of RC2 court was not quite relevant to the instant case but even then since a junior counsel of the defendant company appeared for the defendant company at the RC2 court the learned Counsel could not be heard to say that junior counsel had no authority to act as he did and that the matter should have been handled by the co-operation secretary at the Headquarters. The defendant company is estopped from asserting/alleging that the junior staff was not competent enough to represent the defendant company. Further I did not agree with the learned Counsel appearing for the defendant where he submitted that PW1 was a liar. The latter appeared to me a truthful witness. His only concern being the return of the properties that were taken away by the defendant's servants.

Be that as it may this brings me to the last issue in this case whether the plaintiff took reasonable steps to mitigate the damages.

The learned Counsel appearing for the defendant company submitted that the plaintiff did not adduce evidence to mitigate his damage. At the outset the defendant was interested in the uniport which was not before the court. Why didn't he remove his properties and take them home. The plaintiff refused to take delivery of the goods because he had no lorry and even refused the suggestion to use a wheel barrow. He contradicted himself that he rejected the properties that they were damaged. That was in November, 1986. The lawyers wrote to the defendant claiming the value of the things exhibit P1. The latter was replied to and in Exp P.2. Para.2 the defendants stated that the plaintiff had no interest in the things removed from the uniport and that they were kept for safe custody with knowledge of the police. The plaintiff was looking for exaggerated value. He prayed the court to find that the plaintiff should have collected his properties and should not be paid for any damages. The refusal to mitigate was deliberate. The plaintiff had a lot of options. He could have hired a lorry, or rented a house or he could have taken them to his house.

Mr. Bakuza on the other hand submitted that the plaintiff took all reasonable steps to mitigate the damages. It is on record when he found his uniport removed and when he did not know who had done it he reported to the police and that was confirmed by DW1. It is also on record that after he had established that it was the defendant who had taken the properties he went there and was shown the properties. He could not take the property because some were missing and others were broken. So the next step he took was to contact his lawyers. Also after getting his reply to the letter exhibit P1 (Exhibit P2) which never solved anything, the plaintiff reported the matter to the RCI (Exhibit P3) and the latter gave him a letter sending him to RC2 (PW3) who entertained his case.

Now according to PW1 immediately he learnt that his properties in the uniport together with the uniport had been taken over by the Defendant's servant he reported the matter to the police and also tried to convince the defendant's servants to release the property but the latter just despised and told him to go to court because the uniport belonged to them (the defendant company) as per exhibits P1 and P2.

The plaintiff filed a civil suit for the return of the uniport and judgment was not delivered till 21.6.1988. And, when told to collect his properties most of them were spoiled. The mat had gone rotten, chairs were broken, cotton had been eaten by rats and even DW2 told the plaintiff that some cotton had been burnt. PW1's evidence further showed that he could not have taken away some properties because he had no house to store them. He was just renting a lodge and some of his properties were no longer there. They had been exchanged and that was confirmed by DW2 when he admitted in cross examination that their stores contained other goods other than those of PW1.

From what has been explained above it is the considered opinion of this court that the plaintiff took every step to take away his properties but was frustrated by the defendant's servants. I do not therefore subscribe to the submission by the learned Counsel representing the defendant company that there was no attempt on the part of the plaintiff to mitigate the damages, otherwise if the court had found that the plaintiff did not take all reasonable steps to mitigate the plaintiff would have been debarred from claiming any part of the damages which was due to his neglect to take such steps.

In the end it was the firm view of the court that the plaintiff had proved his case on a balance of probabilities. I enter judgment for the plaintiff as under for properties converted and or spoiled by the defendant's servants viz:—

Sofa set chairs assessed at.....	100,000/= Shs
Three big saucepans.....	36,000/= Shs
Two shall saucepans.....	12,000/= Shs
Cupboard.....	85,000/= Shs
Mat.....	5,000/= Shs
Spring bed.....	30,000/= Shs
Bed sheets.....	10,000/= Shs
Mattress.....	30,000/= Shs

Set of chairs.....25.000/= Shs
Cotton.....150,000/= Shs
Total 523,000/= Shs.

I have not awarded the plaintiff anything on items L & M of the schedule attached to the plaint because the plaintiff did not adduce evidence to prove the same. Those were court brokers' expenses and transport provided to the police for two years.

As regards general damages. According to the evidence on record it is clearly shown that the defendants deliberately committed this tortious act in a contemptuous disregard of the plaintiff's right in order to obtain an advantage which would outweigh any compensatory damage likely to be recovered by the plaintiff. See **Kasure Makerere University (1975) HCB p.376**. When the defendants' servants were told to vacate they refused and advised the plaintiff to take them to court which he did, I would have awarded the plaintiff exemplary damages but the same was never pleaded though the court could have awarded the same as per the item in the plaint which states the court may award any other relief deemed necessary. I am of the view that general damages of shillings 100,000/= would properly compensate the plaintiff for deprivation of his properties taking into account the inflation in the country. Total award 523,000/= + 100,000/= = 623,000/= Shillings.

The plaintiff is also awarded costs of this suit plus interest at court rates on the decretal sum from the date of the delivery of this judgment till payment in full.

**I. MUKANZA
J U D G E
13.11.1992.**