

THE REPUBLIC OF UGANDA.
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 668/87

PATRICK MUYINGO ::: PLAINTIFF c/o
AKENA ADOKO & CO. ADV.

VE RSU S

ATTORNEY GENERAL OF UGANDA:::DEFENDANT

BEFORE: The Hon. Mr. Justice G.M. OKELLO:

JUDGMENT

Patrick Muyingo, the Plaintiff in this case, brought this action in detinue against the Attorney General in the latter's representative capacity in accordance with section 11 of the Government Proceedings Act for the wrong committed against the Plaintiff by the defendants servants/ agents in the course of their employment. In the action, the Plaintiff sought:-

- (a) The return of his motor vehicle No. UWQ-672 or its monetary value at the time of judgment.
- (b) Special Damages
- (c) Cost of the suit and
- (e) Interest on the decretal amount at the rate of 25%.

The background to this claim as revealed by the evidence on record appear to be as follows:- Patrick Muyingo is a businessman. He was employed with CMB (Coffee Marketing Board). At the time of his employment, Muyingo bought a second hand Ford Escort Saloon car of Registration No. UWQ 672 from his employer, the CMB. The transfer of the vehicle was duly registered in his name. He put the vehicle to he use of transporting his children to and from

school, It was also used to transport him to arid from his office and to his village home at Kamuli over weekends. CMB appeared to have had several such similar second hand vehicles. It also another one to Mrs. Teddy Asiimwe who is another of its employees. It appeared however, that CMB made a mistake in having these vehicles registered. The registration book which it handed to Muyingo in respect of the vehicle which he bought reflected wrong descriptions of the vehicle. It instead showed the engine and chassis No. of the vehicle which Mrs. Teddy Asiimwe bought. The NRA soldiers working under the operation “Nagoya” somehow got to know about this discrepancy and they impounded the Plaintiff’s said vehicle. While the said vehicle was in the custody of the soldiers, one Commander Kamukamu of the NRA took possession of the said motor vehicle ostensibly for official us. Meanwhile Patrick Muyingo got the discrepancies rectified and later demanded the return of his motor vehicle. His demand was however refused and he was told instead to forget all about the said vehicle, hence this suit.

The defendant denied the claim and pleaded in paragraph 5 of his WSD that there was no willful refusal by the defendant to release the said vehicle on the Plaintiff’s demand. That the said vehicle was being detained pending investigations into the discrepancies in the registration particulars.

At the commencement of the hearing of the case, the following issues were framed:

- (1) Whether the seizure of the suit vehicle was unlawful.
- (2) If so, what remedy is the Plaintiff entitled.

To constitute the tort of detinue, the following elements are essential: - (a). The property, the subject matter of the case must have been taken away; (b) there must be a refusal to return the good after demand has been made by the Plaintiff; (c) the Plaintiff must be entitled to immediate possession of the good, the subject matter of the suit. For a Plaintiff to succeed in his claim in detinue, he must prove on the balance of probability at the above elements unless they are admitted by the defendant.

In the instant case, counsel for the defendant in the course of the hearing of the case admitted liability. He admitted in other words that (a) there was seizure of the Plaintiff’s said motor

vehicle; (b) by the defendant that there was willful refusal by the defendant to return to the Plaintiff the said motor the Plaintiff's vehicle after the plaintiff's demand and (c) that the Plaintiff is entitled to immediate possession of the said motor vehicles. The defence counsel having admitted liability, I now proceed to find as a fact that the defendant is liable for the wrongful detention of the Plaintiff's said motor vehicle of registration No.UWQ-672, as claimed.

This now leads me to consider the question of remedies and their quantum. Counsel for the defendant contested the quantum of the claim. Mr. Ayigihugu for the Plaintiff submitted that his client claims for the return of the said motor vehicle or its equivalent value as at the date of judgment. I fully agree with that submission because it is the law that in action in trover or detinue, the value of the Property, the subject of the suit, must be assessed as at the time of judgment.

In the case of ROSENTHAL .v. ALDERTON & SONS LTD (1946) 1KB 374, the Plaintiff who was a tenant in the defendant's house gave up his tenancy as he had to go for military service. By arrangement however between him and the defendant, the Plaintiff left some of his goods in the house as he went for his Military service. On his return, the Plaintiff found that some of his properties were missing. The defendant had sold them out without authority. The Plaintiff demanded for their return or alternatively for their value as at the time of the judgment.

Judgment was given for the Plaintiff but, the value of the goods were assessed as at the time between the date when the action was filed and the date when judgment was given. The Plaintiff appealed against the time of Assessment of the value of the goods. It was held on appeal that in an action for detinue, the value of the goods claimed when not returned, must be assessed as at the date of judgment or verdict. That a successful Plaintiff in an action of detinue is entitled to judgment for the redelivery of the goods or in case they are not returned, to their value at the 'time of Judgment together with damages for their detention and costs.

I respectfully agree with the above decision and the reason for it. I so follow it. In the instant case no evidence was led as to the value of the suit vehicle as at the time of the hearing. I appreciate that failure since the vehicle could not be traced by the Plaintiff to assess its value. He however, produced the evidence of Joseph Mukasa PW2. This witness works with Victoria

Motors. His duties include custom clearance of the Company vehicles. The company deals in Fords and Mitsubishi vehicles. According to this witness Ford Escort Saloon Car Model 1984 is no longer in production. The Plaintiff's suit vehicle was a 1984 Model ford Escort Saloon Car. A similar type in production has five doors and costs 6,163 pounds. This was equivalent to Uganda Shs.8.540,000/= at the time of the hearing of the case. It would now cost over 12,000,000/= at the current exchange rate. But all these figures are not helpful for our purpose because the suit vehicle was a second hand. The above figures relate to brand new similar vehicles.

Counsel for the Plaintiff asked for between 4 and 5 million, shillings as the value of the suit vehicle. This is a rough estimate. The vehicle was estimated to value Shs.7,000,000/= at the time of its seizure. But there was even no evidence to support this estimate. This is the figure which appears in the Plaint as the value of the vehicle then. Clearly if this vehicle remained with the Plaintiff in use, it would have suffered depreciation even if it was diligently maintained and serviced.

Given the, constant diminishing value of our money, and doing the best I can in the circumstances, I put the value of the vehicle at 3.500.000/. I thus award this amount as the value of the vehicle at the time of this judgment. This is the amount payable in lieu of the vehicle.

Never indicated in his cross-examination of IW1 that his claim was false He never endeavored to show that these witnesses were telling lies. The learned state counsel did not exercise sufficient diligence in conducting the defence of this suit. I do not agree with him as there is no sound reason to suggest that the Plaintiff did not pay for the item (i) in his claim for special damages. I allow that claim for Shs.9.1001.00/= old currency. After knocking off two zero at the end, leaves Shs.91.000/=. This is the amount which I allow under this heading. The Plaintiff at the hearing adduced evidence to show that, he spent money in hiring vehicles from April 1987 to May 1990 the tune of several millions. On this evidence Mr. Ayigihugu prayed that court award that amount.

With all due respect to the learned counsel, this claim for money spent by the plaintiff in hiring vehicle between April 1987 to May 1990 is misconceived to say the least. It is untenable because

this was not pleaded as required by the principle in **KCC -vs- Nakaye** above. It is therefore rejected.

As regards claims for items (ii), (iii) and (iv) in the claim for special damages, there is no evidence led to prove them strictly. There is no evidence to show that these items were also taken and that a demand was made for their return and was refused. Though these were pleaded as special damages, they must be proved strictly. There being no evidence to prove the claims, they must also fail on the same ground.

The plaintiff being successful in his action in detinue is clearly entitled to general damages for the detention of his vehicle. He is also entitled to cost of the action. Accordingly I award him Shs.50.000/= as General Damages for detention of his vehicle with cost of the suit. I also award, interest on the decretal amount at court's rate from the date of judgment until payment in full.

The Plaintiff also claimed Special Damages. The law regarding claim for special damages is clear. It is that Special Damages must be specifically pleaded and strictly proved. (See KCC -vs- Nakaye (1972) E.A 446 at 449).

In the instant case the Plaintiff claimed in paragraph 8 of his Plaint Special damages the particulars of which ran as follows:— “Particulars of Special Damages.

- (i) Hiring charges for seven months at 1.300.000/= per month; Shs.9.100.000/= see attached invoices annexures F and G
- (ii) Spare wheel valued at 3.000.000/= or its monetary value at the time of payment
- (iii) Jack lever Shs.30,000/= or its monetary value at the time of payment.
- (iv) Tool box with spanners 50.000/= or its monetary value at the time of payment,”

At the hearing, the Plaintiff adduced evidence to prove item (i) above (Hiring charges). He produced Exh P.4 and Exh.P.5 as Receipts for payments which he made. My observation however revealed that these documents - (Exh.P.4 and. Exh.P.5) are invoices showing demand for payment of the amount stated therein. They are not Receipts of payment. George PW3 was

called to testify in support of the Plaintiff's claim that he effected payment of the amount shown in those he effected payment of the amount showing in those invoices. George Mwingo confirmed that payment of those amounts was effected by the Plaintiff to him but that he did not, issue Receipts for them,

Mr. Turyasingura S.A. urged me to disbelieve those witnesses because according to him these claims are cooked and that those evidence were a result of conspiracy. I find thin line of attack by the state counsel rather strange. He did not cross-examine George Mwingo PW3 at all and in summary, judgment is entered for the Plaintiff for:-

(1) Return of his motor vehicle of Registration No.tJW.672 or its value of Shs.3.500.000/=.

(2) Special Damages of She. 91,000/=

(3) General Damages Shs.50.000/=

(4) Cost of the suit and

(5) Interest on the decretal amount at Court's rate from date of judgment until payment in full.

G.M. OKELLO

JUDGE

31.1.92.