THE REPUBLIC OF UGANDA

IN THE HIGH COURT UGANDA AT KAMPALA.

CIVIL SUIT NO.1040 0F 1990

GLORIOUS TRANSPORT CO. (1977) LTD::::::::::::::::::::::::::::PLAINTIFF

VERSUS

ATTORNEY GENERAL::DEFENDANT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

RULING

The Plaintiff is a limited liability company incorporated in Uganda where it carried on business of transport. Its claim against the defendant was in detinue and/or conversion and the Plaintiff sought to recover his motor vehicle from the defendant as well as general and exemplary damages. The Plaintiff alleged in paragraphs 4, 5 and 6 of his plaint that,

"4 - At all material times the Plaintiff was and still is the beneficial owner of a Fiat Lorry Reg. No. UWH 048 which was in his possession.

5 - (a) In or around early 1986, the National Resistance army (NRA) wrongfully removed the said motor vehicle from the Plaintiff's possession and control and equally wrongfully and forcefully retained possession thereof against the Plaintiff's wish. To date the said vehicle has not been returned to the Plaintiff and it has now been reduced to scrap.

(b) The said NRA have since then been using the said vehicle for their diverse operations in the ordinary course of their duties as an army of the Government of Uganda and as such the defendant is liable for their acts.

6- Inspite of repeated demands by the plaintiff, the defendant's said agents have refused, neglected and/or failed to return the said vehicle or to pay its replacement value."

On the above alleged facts, the plaintiff sought the following remedies

(a) the value of the plaintiff's vehicle. (b) General Damages for:-

(i) Conversion and/or Detinue

(ii) Loss of business

(c) Exemplary damages.

(d) Costs of the suit and

(e) Interest on the decretal amount at a Bank rate of 50% from the date of filing the suit till payment in full.

In their W.S.D. the defendant denied that the defendant's servant unlawfully sized and detained the Plaintiff's motor vehicle In the alternative, the defendant pleaded that if the defendant's servants seized the Plaintiff's vehicle which they deny, the servants were not acting in the course of their employment. Consequently the defendant denied liability.

Following the above pleadings, the following issues were framed at the commencement of the hearing for determination of the court:-

(1) Whether the Plaintiff Company is the owner of the said vehicle.

(2) Whether the said suit vehicle is lost to the defendant.

(3) What remedies if any are available to the plaintiff.

The Plaintiff called the evidence of five witnesses. The defendant called no witness despite several adjournments which were granted to it at its instance for the purpose. Finally Miss ZamZam Nangusa told court that she was calling no evidence and that the case should proceed to submission. Both Counsel agreed to submit written submissions which I directed ought to have been submitted to court by 26/5/95. Counsel for the plaintiff submitted his written submission by the appointed date. Miss Nangusa however did not and by 4/7/95 when I sat to write this judgment no such submission had been received. I have therefore decided to dispense with her submission.

On whether the Plaintiff Company is the owner of the suit vehicle, Mr. Okidi contended for the Plaintiff in the affirmative. In support be relied on the evidence of PWI, PW2, PW3 and PW5 He also relied on Exhibit P3 and P1.

The evidence of PW1 was to the effect that he was the driver of the said Lorry which according to him belonged to the Plaintiff Company. This evidence was supported by the testimony of Benjamin Ojara (PW2) who was the Managing Director of the Plaintiff Company. According to Ojara, his company bought this vehicle in 1977 when it was new but later mortgaged it to National Industrial Credit for a loan. Later, the loan was cleared and the mortgage was lifted on the lorry. That evidence was further corroborated by the testimony of Isa Male (PW3) the Managing Director of High Way Car Dealer and Hire purchase Co. Ltd. whose evidence was that his company had financed the purchase of the vehicle for the plaintiff Co. on a hire purchase terms. When the Plaintiff cleared the hire purchase loan on the vehicle, his company ceased to have any interest in the lorry. This evidence was confirmed by the testimony of Proscovia Namatovu (PW5) who was Office Manager of High Way Car Dealers and Hire purchase Company Ltd. She reiterated that her company no longer had interest in the lorry.

It is quite plain from the above evidence that the plaintiff company was the owner of the said lorry. Issue No. 1 is therefore answered in the affirmative.

As to whether the suit vehicle was lost to the Defendant, Mr. Okidi again contended for the Plaintiff in the affirmative. In support he relied on the evidence of PW1 who was the driver of the motor Lorry.

According to PW1, on 16/11/85 he had gone in the vehicle to Mityana in a business trip. He went to collect produce. While he was at a petrol station in Mityana soldiers of the NRA seized the motor vehicle and commandeered it for their operations. He testified that he was himself forced to stay to drive the vehicle where over those soldiers required for their duties. He was kept by them until 12/1/86 when they were only 8 miles from Kampala that these soldiers allowed him to go leaving the lorry with them**.** This evidence was supported by the testimony of Benjamin Ojara PW2 the M/D of the Plaintiff Company whose evidence was that since 1985 when PW1 went with the lorry on a business trip to Mityana the lorry never returned. He never saw the lorry again.

It is clear from the above evidence that the lorry was lost to the soldiers of the N.R.A. There was no contrary evidence. I found those witnesses truthful as they gave their evidence forthrightly. I therefore believe them and find as a fact that the lorry was lost to the N.R.A. This answers issue No.2 also in the affirmative.

The next question then is whether the defendant is liable for those acts of NRA soldiers.

Mr. Okidi contended for the Plaintiff that the defendant was liable because the tort was so proximate to the N.R.A's assumption of powers that it would not be easy to isolate the tort from being part and parcel of continuation of operations subsequent upon or incidental to the said assumption of powers of Government by N.R.A. He relied on Freku Enterprises Ltd .Vs. The A.G (1991) HCB 68

In this case the plaintiff's shop goods were removed by soldiers of the NRA on 2/2/86 from his shop on NaKivubo Road. At the trial the judge considered section 12 of the Legal Notice No.1 of 1986 amendment decree No.1 of 1987. This section attempted to give immunity to the government against tortuous acts of the soldiers during the continuation of the operations consequent or incidental to the said assumption of powers of Government in the Execution of their duties on 26/1/86. Upon that consideration the Judge held that:—

> *"From the interpretation of Decree No. 1 of 1987, Government is not immune from being sued for torts committed by soldiers during the continuation of operations consequent*

upon or incidental to the said assumption of powers of Government in the execution of their duties on 26/1/86".

In the Judge's view, the period between January 26th 1986 and when the alleged tort happened was so proximate to the NRA's assumption of power that it would not be easy to isolate the tort complained of from being part and parcel of continuation of the operation subsequent upon or incidental to the assumption of powers of Government by NRA.

In the instant case too, the tort was committed by the NRA soldiers in the course of assumption of powers of government by NRA on 26/1/86 and they continued to use the vehicle thereafter. This brings the case within the principle in Freku Enterprises Ltd .Vs. A.G above. For that the defendant is liable.

On the issue of remedies, it is instructive to bear in mind that the action was brought in detinue and/or conversion.

Authorities available indicate that in action for detinue the value of the property is assessed as at the time of Judgment (See vol. 38 Halsbury Laws of England 3rd Edn. Page 791 Paragraph 1317; UCB Vs. Matiya Wasswa. CA No. 6/82 unreported),
In the instant case, Mr. Mario Tibabiganya PW4 an export automobile assessor gave a comparative assessment of a similar vehicles in his view the average life span of a similar vehicle was 15 years. The present vehicle was 8 years old. Had been regularly serviced and maintained at the time of seizure. The remaining life span was 7 years. So he put the replacement value at Ug.Shs.42,000,000/= (Exh. P1).

He also assessed loss of earning which he put at Ug.Shs.10,522,000/=. There was no contrary evidence and there was nothing to indicate
that the above assessment was inherently wrong. So I believe them and I allow the plaintiff the followings:-

(1) Replacement value of the vehicle Ug.Shs.42,000,000/=

(2) Loss of earning Ug.Shs.10,522,000/=.

(3) Cost of the suit and interest on decretal amount at court rate.

…….

G.M.OKELLO

JUDGE. 11/7/95