

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 1525 OF 2000**

NAMUGERA MOSES :::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

BANK OF UGANDA:::DEFENDANT

BEFORE: HONOURABLE MR. JUSTICE MOSES MUKIIBI

PROCEEDINGS:

20.4.2001 at 9.15 am.

Mr. Kabega – Counsel for Plaintiff.

Mr. Serwadda – Counsel for the defendant.

Plaintiff is not in court.

No official from Bank of Uganda.

Ngobi: Court Clerk.

Mr. Kabega: My understanding was that the case is coming for a scheduling conference.

Mr. Serwadda: The cause list was silent as to what was supposed to be done today. A hearing Notice was served on my client.

Mr. Kabega:- I came prepared to hold a scheduling conference and to argue the preliminary objection which the defendant intends to raise.

Mr. Serwadda:- We can proceed with a scheduling conference. We have since filing the WSD perused the Financial Institutions Statute and we now tentatively wish to abandon Parag. 3 of the WSD.

Court:- Let us proceed with the scheduling conference.

Mr. Serwadda:- The defendant concedes that Mr. Nair was appointed by the defendant to be the Managing Director of the Greenland Bank. The defendant also concedes that at that time it had taken over management of the Bank.

The defendant concedes that when Mr. Nair was appointed Managing Director of Greenland Bank, before it was closed, he was a servant of the defendant. The defendant does not admit that Mr. Nair continued to be Managing Director of Greenland Bank after it had been closed.

The defendant does not admit that Mr. Nair converted the plaintiff's car to his use, or that if he did so, it was in the exercise of his official duties.

Mr. Kabega:- The Plaintiff admits that Mr. Mawanda, acting as his agent, obtained funds from a source unknown to him for the purpose of paying taxes and clearing his vehicle for registration. The plaintiff paid back the money to Greenland Bank (In Recivership/ Liquidation).

Mr. Serwadda:- From the contents of annexure "G" to the plaint the defendant concedes that until 10.5.2000 the vehicle was in the possession of the defendant.

Court:- Let the issues be framed.

AGREED ISSUES.

- (1) Whether or not the plaintiff, acting by his agent, obtained the consent of Greenland Towers to park his vehicle in the basement of Greenland Towers.
- (2) Whether or not Greenland Towers was under any duty to take care of the vehicle.
- (3) Whether or not Mr. Nair, in the exercise of his duties, converted the plaintiff's car and actually used it as his official car.
- (4) Whether or not Mr. Nair was an employee/servant of the defendant after the closure of Greenland Bank.
- (5) Whether or not the defendant is liable for the acts of Mr. Nair, relating to the alleged conversion and use of the plaintiff's vehicle, before and/or after the closure of Greenland Bank.

- (6) Whether or not it was the responsibility of the defendant to keep the vehicle under a good care and in a sound mechanical condition.
- (7) Whether or not at the time the vehicle was handed over by the defendant to the plaintiff it was in a sound mechanical condition.
- (8) Whether or not the plaintiff has suffered any loss or damage.
- (9) Whether the plaintiff is entitled to any of the reliefs prayed for.

Court:- By consent of both counsel this case is fixed for mention on Thursday 24.5.2001 at 2.30 pm.

MOSES MUKIIBI

JUDGE

20/4/2001.

24.5.2001 at 3.45 pm.

Mr. Oyine Ronald – holding brief for Mr. Kabega – counsel for the plaintiff.

Mr. Serwadda – Counsel for the defendant.

Plaintiff is not in court.

No official from Bank of Uganda.

Ngobi: Court Clerk.

Mr. Oyine: I have discussed the matter with my learned friend who agrees that the matter should be settled out of court.

He informed me that he has communicated to his client and awaits its instructions. I pray for a date when we shall report a settlement. If we reach a settlement before that date we shall file a consent Judgement.

Mr. Serwadda:- That is a correct position.

Court:- This matter stands adjourned. By consent of both Counsel it is adjourned to Tuesday, 26.6.2001 at 9.00 am for mention.

MOSES MUKIIBI

JUDGE

24/5/2001.

4/7/2001 at 2.35 pm.

Mr. Oyine – holding brief for Mr. Kabega counsel for plaintiff.

Mr. Serwadda – Counsel for the defendant.

Plaintiff is not in court.

Ngobi:- Court Clerk/Interpreter.

Mr. Oyine:- I did not get response from counsel for the defendant.

He has just informed here outside court that his client cannot settle the matter outside court. I humbly apply for a hearing date.

Mr. Serwadda:- My client has instructed me to proceed with the hearing of the case. I also pray for a hearing date to be fixed.

Court:- By consent of both counsel this case is fixed for hearing on Monday 10/9/2001 at 9.00 am.

MOSES MUKIIBI

JUDGE

4/7/2001.

10/9/2001 at 9.45 am.

Mr. Kabega and Mr. Oyine both counsel for plaintiff.

Plaintiff is in court.

Mr. Serwadda – Counsel for the defendant.

Ngobi:- Court Clerk/Interpreter.

Mr. Kabega:- We are ready to proceed.

Mr. Serwadda:- I am ready to proceed.

Court:- Call your first witness.

Plaintiff:- MOSES NAMUGERA

Protestant, Sworn and states:-

I am 45 years old. I reside in Bergheim, in Germany. I have a legally registered engineering office. We do, technical inspections engineering and commissioning of plants in electrical and instrumentation. I have a Masters Degree in Electrical Engineering and a class 1 world wide Inspectors Licence. From November 11th 1981 I have been in Germany. I came to Uganda on Sunday, yesterday [9/9/2001].

I came because of the present case against Bank of Uganda.

In 1997 I met one Abbas Mawanda, then general manager, Greenland Bank, in Bergheim, Germany. I told him that I had a car which I wanted to export to Uganda. He assumed me that he could be of help. He left me his telephone contact in Der es Salaam. Late 1997 I contacted him and told him I was ready to him and told him I was ready to send the car through Dar es Salaam. He used Greenland clearing Agency to clear the car and bring it to Kampala. I kept communicating with Mr. Mawanda by telephone. The car was cleared and registered by Greenland Clearing Agency. The Reg. No. was 861 UEG. It was 750 1 BMW. The vehicle was registered in my names. The registration Book was kept by my father who lives at Masaka.

I have the Log book now. I wanted the vehicle to be used to earn money by way of special hire. Occasionally if and when I came I would use it. After the car had arrived in Uganda with a team of Germans. The delegation was big. I never bothered to look for that car. We hired a van to be used by the delegation.

I had discussed with Mr. Mawanda if I could hire the car to some of the staff of Greenland Bank. When I came I met some of the Bank Staff. I talked to Mr. Sulaiman Kigundu and some others. I contacted a mechanic to come and inspect the car. The mechanics were Godfrey and Kasozi working in G.S. Motor Services, at Ndeeba. They are dealers in Mercedes Benz, BMW and Volvo vehicles. They checked the car. They reported to me that the car was in good running

condition. The car was being kept at Greenland Towers, basement. I left the country with another delegation to China. I came back to Uganda. I eventually left Germany.

It was the end of January, 2000. Two weeks later I was informed by Nixon Ndwula that my car had been auctioned. I took a plane and came to Uganda. I went to Bank of Uganda. I was directed to the office of Mrs. Matovu, in charge of bank of Supervision. I laid claim to my car. She referred me to the agents of Bank of Uganda, the liquidators of Greenland bank, M/s Deloitte and Touche. I went to them and talked to one AGNES. She informed me that the money owed Bank of Uganda some money. They suspected the vehicle belonged to Greenland Bank. I went to Masaka to collect the Registration Book. The Bank of Uganda officials doubted my ownership of the vehicle. So did M/s Deloitte and Tounche officials. I presented the Registration Book/Card to them. They asked me to write a claim for the car because it had been sold. I engaged M/s Mwesigwa Rukuntana and Co. Advocates who lodged a caveat on the car. I reported to CPS Kampala, Fraud Section. I went with CID officers to M/s Deloitte and Touche who tossed us to and fro, referring us to Bank of Uganda. I went with police Inspector Oddo to M/s Deloit and Touche. It took me one month. Agnes of Deloit and Tounche told me that she was waiting for information from Dar es Salaam to clear the car. I went to Mr. Kasozi, in the bank of Uganda legal Department Mr. Odoo explained the case to him. The next day I went to Agnes of M/s Deloitte and Touche. She asked me to go back in the afternoon, to collect the car. That same day she cleared the car. She told me that she had people who were interested in buying the car. She said they were the same people to whom they had sold the car. They were: Eddie Matovu and Anthony Sekatawa. I saw these two who offered to buy the car at U. Shs. 10 Millions. The said Ssekatawa is an Advocate. I refused the offer and insisted on seeing the car. I Kasozi and Agnes went to a garage where the vehicle was kept at Dewinton Road. My car was originally white. I found it in a garage repainted metallic blue colour. The seats were stripped, the ignition key had been changed; all door and boot keys had been changed. There keys had been changed. There was no batterly. The car had a Special audios system radio from BMW; the speakers; a special telephone, antennae; the tyre rims – 17 inch AMG type; The con driver seat switches; the carpets; all these items were missing. The vehicle computers – a big one and a small one could not get switched on. This was an indication that there was a major defect. The

big computer would make a through check on all systems except the types. Agnes of M/s Deloitte and Touche and Kasozi of Bank of Uganda told me that:-

“There is your car” I found Eddie Matovu and Sekatawa in the garage. Agnes and Kasozi left the garage. They had told Mr. to take my car. I took control of the car. They did not give me the keys for the car. Ssekatawa again offered to buy the car at Shs. 10m/=. I again refused the offer. I asked the staff to the garage to put back what ever they had removed from the car. It was Friday evening. I went back the next Monday to collect the car but it was no longer there. I was informed that the car had been taken away on orders from Agnes. I went back to Agnes. She told me that the car owed the Bank Greenland Bank some money. She told me I would take the car the hard way. She told me that she had put the car back in the basement of Greenland Towers. I went back to Kasozi - of Bank of Uganda. He told me that he had given me my car at the garage, and had nothing to do. I went and contacted the Governor , Bank of Uganda, the late Kikonyogo. I went with my wife. I was completely broke. I had lost one of my jobs. The Governor called Mrs. Margaret matovu. Mrs. Matovu promised to settle the matter as soon as possible. Sometime in April, 2000 I received a letter from bank of Uganda to pay the Registration costs for the vehicle. It was Shs. 5,585,661/= for clearing, registration and taxation costs for the vehicle. It was dated 19th April, 2000. It was written by M/s Deloitte and Touche.

Mr. Oyine:- I apply to tender the letter in evidence.

Mr. Serwadda:- No objection.

Court:- A photocopy of a letter dated 19th April, 2000 written to the witness by M/s Deloitte and Touche, bearing a received stamp of bank of Uganda, is admitted in evidence and marked Exhibit P.1.

Plaintiff Continues:- I went back to Agnes to inquire whether I would get my car if I paid the money. Agnes said that would consider releasing the car. I was not satisfied. I went back to the Governor, Bank of Uganda. The Governor wrote a letter directing M/s Deloitte and Touche to release my car if I paid the money. I got a copy of that letter. It was dated 10 May, 2000. It was addressed to M/s Deloitte and Touche. I conveyed the original letter to M/s Deloitte and Touche.

Court:- Let us take a short break of 15 minutes.

MOSES MUKIIBI

JUDGE

10/9/2001.

At 12.20 pm.

All Counsel and Parties are in Court as before.

Court:- Plaintiff is reminded that he is still on Oath.

Plaintiff Continues:- After I got the letter from bank of Uganda I paid the money on 9th May, 2000 I have a copy of the deposit slip.

Mr. Oyine:- I apply to tender the deposit slip in evidence.

Mr. Serwadda:- No objection.

Court:- A carbon copy of a deposit slip in respect of payment effected by the witness on 9th May, 2000 is admitted in evidence and marked Exhibit P.2.

Plaintiff Continues:-

I paid money which represented the costs of clearing, registration and taxes in respect of the vehicle. After I had paid the money I went to M/s Deloitte and Touche and showed them the Bank slip. I collected my mechanics – Godfrey and Kasozi of G.s Motor Service, Ndeeba I asked them to inspect the car at Greenland Towers. They carried out Preliminary inspection. They said that the car could not move. This was on 9th May 2000. M/s Deloitte and Touche told me that they could not release the car until they got clearance from Bank of Uganda. The next day, on 10th May, 2000 I got a letter from the Governor addressed to M/s Deloitte and Touche.

When I conveyed the letter to Agnes she wrote a release note and gave me the keys for the car. I have the release note. I signed the release note. Agnes also signed it. It is the original which I have here.

Mr. Oyine:- I apply to tender the release Note in evidence.

Mr. Serwadda:- No objection.

Court:- An original release Note dated 10 May, 2000 is admitted in evidence and marked Exhibit P.3.

Plaintiff Continues:-

I brought the mechanics again. They towed the vehicle to Ndeeba. I instructed the mechanics to inspect the vehicle again, which they did. They gave me an inspection report and an invoice.

I have an original of the inspection Report. It is dated 9th May, 2000.

Mr. Oyine:- I pray to tender the inspection Report as an exhibit.

Mr. Serwadda:- No Objection.

Court:- An Original hand written inspection report dated 9th May, 2000 in respect of M/V 861 UEG (BMW) is received for identification and marked ID P1.

Plaintiff Continues:-

I was given an Invoice on 10 July, 2000. I have an invoice dated 10th July, 200. It was addressed to me. It refers to M/V Reg. No. 861 UEG (BMW). It was issued by M/s G.S. Motor Services.

Mr. Oyine:- I pray to tender the invoice in evidence.

Mr. Serwadda:- NO objection.

Court:- An original invoice dated 10th July, 2000 addressed to the witness, relating to M/V Reg. No. 861 UEG (BMW) is admitted in evidence and marked Exhibit P.4.

Plaintiff Continues:-

The invoice relates to Spare Parts which were needed to put my vehicle back to a sound mechanical condition. The total amount shown on the invoice is Shs. 21, 297, 600/= . After I got this invoice I approached M/s Deloitte and Touche and Bank of Uganda. I showed them the invoice. I discussed with them. I demanded that they put my vehicle back to a running condition. M/s Deloitte and Touche told me that they had nothing to do. They advised me to take legal channels. I never put my car to use; I could not hire it out. It was held by Bank of Uganda. I lost income from 8th Dec. 1998 to 10th May, 2000. My car is the equivalent of an S-Class Mercedes Benz. It is probably the only one in Uganda. If I hired it out I would not take less than US \$ 100/= per day. I had gone to Agnes to claim my car. She told me that the car belonged to Greenland Bank and it had been used by their General Manager, Mr. Nair. Between 8th Dec. 1998 until 10th May, 2000 my car was in the hands of Bank of Uganda. If M/s Deloitte and Touche had cleared the matter within 30 days I would have gone back to Germany. I was kept moving from office to office. I decided to stay on a little longer. I thought the matter would be completed the next week. I stayed around for 100 days. I am paid DM 125 per hour. I work 8 hours a day. The exchange rate for DM has remained the same for a long time. When buying you pay U.Shs. 800/= for one DM. I used to work for the British Inspection Engineers Co. I had job with British Inspection Engineers. When I was called to Uganda I promised them that I would go back within one week. I did not report back. I lost that contract. It was supposed to last 9 months. I had kept in contact with B. I. E. I lost the contract from weeks after I had been here. I kept postponing my return week by week. B.I. E. called me and informed me that they

had given the contract to some one else. The contract would have paid me DM 125 per hour. I work 8 hours a day. The contract was for 9 months. I asked B.I.E for a document showing how much I earn per hour. Mr. Bill bates of B.I.E. sent me a letter addressed to whom it may concern dated 20th Oct. 2000. It was sent to me as a fax.

Mr. Oyine:- I apply to tender the fax message in evidence.

Mr. Serwadda:- The fax message was not written by the witness. It was not addressed to him. He is not named as a recipient.

We doubt the authority of the author.

Mr. Oyine:- This was a general purpose document addressed to “whom it may concern”. The document was issued to support the witness claim; it refers to him; it is coming from his work place, it is coming from his work place; he has testified that the he received it as a fax; it is tending to fade but it can be read. The witness testified that he works with B.I.E.

Court:- The document is in the nature of a certificate or testimonial. No doubt the witness is the subject. It was addressed to the whole world. It was annexed to the plaint, thus warning the defendant of its existence and giving it an opportunity to verify its source. It could not have been written by the witness; nor could it have been addressed to him. The authority of the author to issue it is a matter for the defence to verify, if they so wish. I see no merit in the objection. I do over rule it. I admit the fax message in evidence.

MOSES MUKIIBI

JUDGE

Court:- The fax dated October 20th, 2000 is admitted in evidence and marked Exhibit P.5.

Mr. Oyine:- We have worked through lunch time. It is coming to 2.00 pm. I apply for an adjournment.

Court:- By consent of all counsel this case is adjourned to Wednesday 12/9/2001 at 3.00 pm for hearing.

MOSES MUKIIBI

JUDGE

10/9/2001.