

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT No. 412 OF 2001**

FAUSTINO MUKULIRA ::: PLAINTIFF

- VERSUS -

ATTORNEY GENERAL ::: DEFENDANT

**BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO**

**J U D G M E N T:-**

The plaintiff brought this suit against the Attorney General in his representative capacity representing the Uganda Police. The claim is for the recovery of 153 heads of cattle or the equivalent in Uganda shillings at the current market price, general damages, interest and costs of the suit. The facts constituting the cause of action arose as hereunder:-

The plaintiff was an owner of a farm and cattle at Nsozi, Kyangwale in Hoima District. Sometime on 5/7/2000, D/SSP Nsababera in the course of her employment led a team of police officers from Central Police Station, Kampala in a pick-up armed with guns and proceeded to the plaintiff's farm above named, arrested the farm manager and the LC1 chairman who tried to question them. Later on they drove away all the plaintiff's cattle totaling 160 in number. The same were never returned to him except 7 cattle. Hence the claim for the recovery of the 153 cattle or their value.

The defendant denied the allegations and contended that the police officers involved were on frolic of their own whereupon the defendant could not be held vicariously liable for their acts.

During the scheduling conference the following were agreed upon:-

Facts:-

1. That the plaintiff was at all material times the owner of a farm with cattle at Kyangwali in Hoima District.
2. That on 5<sup>th</sup> July 2000, the plaintiff's cattle were confiscated by a team of police officers led by D/SSP Nsababera.
3. That on the 20<sup>th</sup> September 2001 the plaintiff received back 7 cattle out of the 160 confiscated.
4. That the rest of the plaintiff's cattle have never been returned.

Documents:-

1. A letter dated 19/10/2000 written to the plaintiff by the Inspector General of Police about the plaintiff's cattle.
2. A letter of 15/9/2000 by the Inspector General of Police to the Regional Police Commander Kampala Central.
3. The plaintiff's complaint to the Regional CID.
4. A letter dated 9/8/2000 where the police agree to give the plaintiff his cattle pending clearing the matter.
5. Cattle movement request/permit by the District Veterinary officer dated 9/5/2001.

6. A letter authorizing movement of cattle.
7. A letter to move cattle
8. Resident District Commissioner's letter returning some cattle.
9. A statutory notice.

Issues:-

1. Whether the plaintiff's 160 cattle were unlawfully confiscated by D/SSP Nsababera.
2. Whether D/SSP Nsababera was acting in the course of her employment when she confiscated the cattle.
3. Whether the defendant is vicariously liable for the actions of D/SSP Nsababera.
4. Whether the plaintiff is entitled to the remedies prayed for.

Evidence adduced:-

The plaintiff called three witnesses.

**Kasangachi Augustine (PW1)** testified that he was LC1 Chairman Nsozi, Kyangwali sub-county in Hoima. He stated that on 5/7/2000 a team of police officers came to his area of jurisdiction being led by a lady called Nsababera. The lady police officer then asked him whether he knew about the cows which were with the plaintiff's herdsman at the army detach. He gave the police officer movement permit indicating movement of 160 cattle belonging to the plaintiff (exhibit P1). After that Nsababera arrested him together with Rwamunono and the plaintiff's herdsman, tied them with ropes and took them to Hoima Police Station where he was detained for three days. He was only released after the intervention of the Resident District

Commissioner of Hoima. Rwamunono and the plaintiff's herdsman were remanded in prison. Meanwhile the plaintiff's cows were taken to the police station and confiscated.

**Emmanuel Rwamunono PW2** testified that in 2000 he was working at the plaintiff's farm as farm manager. He stated that on 5/7/2000 he was at Nsozi trading centre selling milk when he saw some people armed with guns, who asked him to identify himself. After identifying himself they ordered him to sit down. They removed his shirt and tied him with ropes. He was taken to the army detach at Nsozi Trading Centre. He later saw the chairman (PW1) who demanded to know why he was arrested. From there PW1 was also arrested and made to sit down. The plaintiff's cattle were then brought whereupon he identified them. The plaintiff had 160 cattle. After identifying the cattle he never saw them again. He was later taken to Hoima where he was charged with theft of cattle. The charge was however dismissed.

He concluded that when he went back home he never saw the plaintiff's cattle again.

**Faustino Mukulira PW3** testified inter alia that in the year 2000 he had a farm for keeping cattle at Nsozi. He stated that on 7/7/2000 he received a message that on 5/7/2000 a team of police officers from Kampala Central Police Station led by D/SSP Nsababera had gone to his farm and forced his wife to lead them to his kraal where they arrested his herdsman and confiscated his cattle. On receipt of that information he went to Kampala Police Headquarters where he was referred to Central Police Station to see D/SSP Nsababera. Nsababera decided to arrest him and detained him for 8 hours. She later released him on police bond and ordered him to report to Hoima Central Police Station. On reaching Hoima Central Police Station the Police CID took his statement and ordered him to keep on reporting daily for one month. Later on he

started to look for his cattle, which were confiscated. With the help of the Resident District Commissioner and Regional Police Commander he managed to recover 7 of them. He found them in Kagadi Army barracks. So out of 160 cattle, which D/SSP Nsababera had taken, he only recovered 7. After failing to recover the rest he contacted his lawyers. He testified that he drove his 160 cattle from Kyankwanzi to Nsozi on foot after getting movement permit from District Veterinary officer Kiboga (exhibit P1). He stated that the police headquarters investigated his case and found that his cattle had been taken without authority and that he was not guilty of any theft (exhibit P2). He concluded that he wanted the return of his 153 cattle or their equivalent at shs.350, 000/= per cow plus costs of the suit.

The defendant did not adduce evidence. The matter thereafter proceeded by way of written submissions.

### **RESOLUTION OF ISSUES:-**

#### **ISSUE No. 1:-**

1. Whether the plaintiff's cattle were unlawfully confiscated by D/SSP Nsababera.

The defendant conceded that some heads of cattle were confiscated and that the same were unlawfully confiscated by D/SSP Nsababera according to the police report (exhibit P2). According to the defendant only 43 cattle could have been confiscated and not 160 as claimed by the plaintiff. They relied on exhibit P2.

In the instant case the plaintiff adduced uncontraverted evidence that 160 heads of cattle were confiscated by D/SSP Nsababera. The defendant did not adduce any evidence to the contrary. The report by Osega Julius (exhibit P2) could not be relied on as evidence for the number of cattle which were confiscated since he was not produced in court for his confirmation of the number of cattle which were confiscated. That was very important. Furthermore none of those who participated in the illegal act were produced in court. They should have been produced to state how many heads of cattle they had removed from the plaintiff's farm. In the absence of that evidence it can be concluded that the plaintiff has proved on the balance of probabilities that 160 heads of cattle were removed from his Kraal out of which only seven were recovered.

Issue number 2 and 3:-

Whether D/SSP Nsababera was acting in the course of her employment when she confiscated the cattle and whether the defendant is vicariously liable for the actions of D/SSP Nsababera.

Basing on the police report exhibit P2 the defendant conceded that the police officers involved in the incident were acting in the course of their employment though their actions were illegal. I do agree. D/SSP Nsababera was indeed acting in the course of her employment. She was traveling in a police pick-up accompanied by other policemen in uniform armed with guns. They went and introduced themselves before LC1 chairman of the area. The police report exhibit P2 did confirm that the police team was clearly in the course of their employment except that they exceeded their authority. The defendant is therefore vicariously liable for the acts they did on the plaintiff's farm: See **Barugahare Vs Attorney General SCCA No. 28/93.**

Issue number 4:-

Whether the plaintiff is entitled to the remedies prayed for.

(a) Recovery of cattle or equivalent of Uganda shillings.

Having found that the plaintiff had lost 160 heads of cattle out of which 7 were recovered, the balance of 153 is recoverable or its equivalent value in Uganda shillings. The plaintiff stated that the value of local cattle is between 400,000/= - 450,000/=. The defence was of the view that a local cattle is valued between 200,000/= - 300,000/=.

None of them talked about sizes. It cannot be true that the cattle, which were taken, were of the same size. Some could have been smaller. So we should talk about average. I would therefore give average price of 250,000/=. So the equivalent of 153 heads of cattle would be shs.38,250,000/=.

(b) General damages for inconvenience and violation of right to own property.

The plaintiff stated that he suffered arrest and detention at the wrongful hands of the police officers and yet he was sickly. I do find that he suffered inconvenience and embarrassment. As a cattle keeper he might have suffered physically and emotionally after loosing the whole of his cattle. He should be awarded damages in any event. Counsel for the plaintiff proposed a sum of shs.10 million while the defence proposed shs.500,000/=. Considering the circumstances of the case I would award the plaintiff shs.2 million by way of general damages.

(c) Exemplary damages.

Exemplary damages are awarded to the plaintiff where the act complained of is done by a government servant oppressively, arbitrary or unconstitutionally. Causing the arrest of the plaintiff on suspicion of theft was not unconstitutional. The acts of the defendant's servants were not oppressive nor arbitrary. They were enforcing the law although they ended up acting illegally. In circumstances the claim for exemplary damages cannot stand.

All in all judgment is entered for the plaintiff for the recovery of 153 heads of cattle or their equivalent of shs.250,000/= per head (two hundred and fifty thousand shillings only). The plaintiff is entitled to general damages in the tune of shillings two million plus costs of the suit. Interest is awarded at court rate from the date of judgment until payment in full.

**RUBBY AWERI OPIO**

**JUDGE**

**28/9/2004.**

29/9/2004:-

Nabakoza Margaret for defendant.

Plaintiff in court.

Muhimbura reported sick.

Judgment read in chambers as in open court.

**RUBBY AWERI OPIO**

**JUDGE**

**29/9/2004.**