IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL SUIT NO. 24 OF 2012

POWER AND CITY CONTRACTORS LTD.....PLAINITFF

V

LTL PROJECTS (PVT) LTD.....DEFENDANT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The plaintiff through its advocates Nyote & Co. sued the defendant company in tort and for special and general damages arising from the tortuous acts. The plaintiff alleged that he is the beneficial owner of a pajero UAD 614Y, self loader lorry UAJ 137R, Tipper 266B; and a compressor . That in November 2011, the 2nd defendant acting on behalf of the 1st defendant caused the police at Kaberamaido to take and detain the chattels .

During the trial, the suit against the second defendant(Ruwan Jayaratine) was withdrawn on the condition that both parties admit he is an employee of the 1st defendant.

The plaintiff averred that the defendant has refused to cause the release of the said chattels in spite of several requests.

The plaintiff further claimed that on 2.3.2012 it entered into a contract for hire of the said chattels for 180 days with effect from 2.3.2012 but was unable to make available the said chattels due to the defendant's conduct and as a result, suffered loss of 360,000,000/.

In defense, the defendant denied the claims and averred that a settlement agreement entered into in June 2012 between both parties released the defendant from all claims.

Five issues were framed for trial.

1. Whether the 2nd defendant caused the impounding of the plaintiff's chattels.
2. Whether the 1st defendant is vicariously liable to the plaintiff for the actions of the 2nd defendant.
3. Whether the plaintiff has the locus to sue for recovery of the suit vehicles.

4. Whether the parties reached a settlement on all outstanding claims against each other.

5. Remedies.

Both parties adduced evidence by way of witness statements upon which the said witnesses were cross examined. I carefully considered the witness statements and oral testimony adduced in cross examination and examined all documentary evidence.

Both counsel filed written submissions that i have carefully studied and considered.

I now proceed to resolve the issues.

1. **Whether the 2nd defendant caused the impounding of the plaintiff's chattel and vehicle.**

On this issue, the plaintiff relied on evidence of five witnesses while the defendant called two witnesses.

From the evidence of DW1 Namisi Joseph, an employee of the defendant and DW2 Onzia Joseph it is not in dispute that the vehicles and compressor impounded by Kaberamaido police belong to the plaintiff. Both witnesses admit this fact in their witness statements and oral testimony in cross examination. PW1 Mugume Samuel, a director in the plaintiff company produced log books for two vehicles and a sale agreement (Dexh.1) for motor vehicle UAJ 266B.

It is therefore not in dispute that a pajero UAD 614Y, a self loader lorry UAJ 137R, a tipper UAJ 266B and a compressor belonged to the plaintiff company.

This brings me to the issue at hand, i.e, whether the 2nd defendant caused the chattels to be impounded by Kaberamaido police.

According to the written statements of DW1 Namisi and DW2 Onzia, the 1st defendant , acting on behalf of the Consortium, by letter dated 7.11.2011 requested Kaberamaido police station to impound the plaintiff's property until the plaintiff's workers were paid their dues.

On the other hand , the evidence of PW1 Mugume is that the chattels were impounded with malice and in bad faith by the police on the instructions of the defendant .

What emerges from the evidence of both parties is that the defendant admits the letter was written but that it was written on behalf of the Consortium and not on behalf of the defendant company.

This consortium comprised the plaintiff, the defendant and Muringa Holdings which consortium contracted with Government of Uganda to construct power lines.
In his submissions, counsel Waluku for the defendant contends that one Ruwan, originally second defendant, acted on behalf of the consortium and therefore the defendant is not liable. Counsel drew my attention to the letterheads of the letter dated 7.11.2011 which authorised the detention of the plaintiff's property.

While the letter is on the letterhead of the Consortium, the defendant in the consent withdrawal filed on 31.3.2015 acknowledges that Ruwan is its employee and therefore vicariously, the defendant takes responsibility for the consequences of that letter.

DW1 Namisi and DW2 Onzia confirm in their statements that the defendant, on behalf of the Consortium, requested Kaberamaido police station to impound the plaintiff's property .

From the foregoing analysis, i find that on 7.11.2011, the defendant directed the police to detain the plaintiff's property vicariously through Ruwan,
I agree with the definition of course of employment adopted by Lady Justice P. Basaza in **Jinja civil Appeal No. 120 of 2010 Crane Bank ltd v Sr. Francis Theresa Okondo** . In the appeal, the judge cited **Muwonge v Attorney General (1967) EA page 17** where Newbold held that

> *'an act may be done in the course of employment so as to make his master liable even though it is done contrary to the orders of the master, and even if the servant is acting deliberately , wantonly, negligently, or criminally , or for his own behalf, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable'*

I find that as Ruwan was an employee of the defendant, the latter is vicariously liable as Ruwan was acting in the course
of his employment.

As to whether the defendant was justified in its conduct, the testimony of defendant's witnesses was that the plaintiff's workers had not been paid and that therefore it was the reason for the plaintiff's lack of progress in executing its tasks. As a result, the plaintiff's vehicles and compressor were impounded.

If there was breach of the consortium agreement by the plaintiff, this did not attract criminal liability.
The defendant was therefore not justified in ordering for the detention of the plaintiff's property by Kaberamaido police.

In law, the conduct of the defendant amounts to trespass to goods, a common law tort. Counsel for the plaintiff cited a text book by Jackson Tudor (1976)Law of Kenya , that gives the definition to trespass to goods as

> *' an unlawful act of direct physical interference with a chattel which is in possession of another'.*

In Tort Law by Nicolas et al second edition, Longman's Law series(2005), page 343 , the authors state that there are three instances when the tort is committed:

a) When A directly interferes with goods in B's possession;
b) When A did so intentionally and carelessly
c) When A had no lawful justification or excuse for acting as he did.

By requesting Kaberamaido police to detain the plaintiff's property , and failing to give instructions to police to release the property amounts to intentional interference with plaintiff's possession of its property without lawful excuse.

2. **Whether the plaintiff has the locus to sue for the recovery of the vehicles and compressor.**

This issue has been discussed extensively under issue number one where i determined the plaintiff's ownership of the vehicles and compressor before determining whether the defendant caused them to be impounded.

In arguing this issue, counsel for the defendant focused on the responsibility of the plaintiff to retrieve its property from the police and that the Attorney General ought to have been made a party.
The plaintiff's witnesses, in particular PW1 Mugume and PW2 Nayamba Douglas testified that Mugume made efforts to request for the vehicles and compressor but the police asked for authority from the defendant to release the property. Indeed when PW5 Okongo Emmanuel went to Kaberamaido police station to photograph the vehicles and compressor on 2.4.2015,

the said items were still in police custody. This is in spite of earlier requests by PW1 Mugume to have them released.

In response to counsel's submission, i find that the plaintiff's representative made effort to retrieve the plaintiff's property but he was not helped by the defendant.

I find that the plaintiff had locus standi to sue for the return of the vehicles and compressor being property of the plaintiff company.

With regards to failure to sue the Attorney General, the plaintiff exercised its right not to join the Attorney General as a party.

3. **Whether the claim was settled in an earlier settlement**

This issue was framed on my instructions when i dismissed a preliminary objection in which the defendant's counsel submitted that all claims between the parties were settled by an agreement dated June 2012 in which it was agreed that both parties release each other from all existing claims.

I have examined the agreement marked Dexh. 2 . Following this agreement, a consent judgment was entered in Soroti Civil Suit No. 29 of 2011 on 21.6.2012 between the same parties except that the plaintiff in the concluded suit did not sue for recovery of impounded chattels.

Therefore, I find that the settlement does not preclude the plaintiff from pursuing the recovery of its chattels that were impounded on the defendant's request.

Remedies

The plaintiff prayed for special damages for loss suffered as a result of inability to perform a contract it entered into with Namaubi Enterprises Ltd for hire of the impounded vehicles at a daily rate of 2m for six months with effect from 2nd March 2012. The plaintiff therefore prayed for special damages of 360m.

For this claim to succeed , the defendant must have foreseen that the plaintiff would enter into an agreement for hire of the impounded property . At the time this agreement was made, the property had been in police custody for approx. four months since November 2011.

Both counsel in their submission acknowledge that the property is still detained at Kaberamaido police station to date.

It was therefore speculative for the plaintiff to enter into an agreement whose subject matter was not in his control. Therefore , the defendant could not have foreseen that the plaintiff would commit vehicles and compressor over which it had no control .

For the foregoing reason, I find that the defendant is not liable for 360m the plaintiff expected to earn from the aborted contract.

With regard to general damages, i note that the plaintiff's property is still held at Kaberamaido police station which means the plaintiff has been deprived of its use for commercial purpose for close to three years and ten months. Added to this is the depreciation due to exposure to weather and non use for a prolonged period of time.

The arbitrary conduct of the defendant in causing the detention of the property then colluding with Kaberamaido police to continue to detain the property is high handed and attracts general damages.

In **Lutaaya v AG, Court of Appeal Civil Appeal No. 2 of 2005** (reported on Ulii), the Court of Appeal awarded general damages of 100m for trespass to land which trespass continued from 1995 to 2005 when judgment was delivered.

Considering all these factors, a sum of 80m(eighty million)/= general damages for the tort of trespass to goods is adequate.

In summary, i make the following orders:

1. The plaintiff is awarded 80 million/= as general damages plus interest at 17% p.a from date of judgment till payment in full.
2. The three vehicles(Pajero UAD 614Y; self loader lorry UAJ 137R; Tipper 266B;) and compressor in the custody of Kaberamaido police station be handed to the plaintiff's representative immediately and without any delay.
3. Costs of the suit to the plaintiff.

DATED AT SOROTI THIS 11th DAY OF SEPTEMBER 2015.

HON. LADY JUSTICE H. WOLAYO