

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO.15 OF 2014**

**TICLDA UGANDA LTD :::::::::::::::::::::::::::::::::::PLAINTIFF
(Suing through its appointed attorney
ABDALLAH R. SWALLEH)**

VERSUS

ZAHID RAFIQUE :::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

JUDGMENT

The plaintiff brought this suit through its appointed attorney against the defendant for a declaration that the plaintiff was the lawful owner of the Motor Vehicle, **Reg. No. UAS 67 Single cabin Hilux**, and that the defendant had fraudulently registered himself as the owner of the said Motor Vehicle. The defendant did not file a defence, and as a result, judgment was entered against him in default and the matter was set down for formal proof under the provisions of **Order 9 rule 5 & 10** of the **Civil Procedure Rules, SI 71-1**.

At the Court scheduling, two issues were framed for determination;

1. Whether the plaintiff is the lawful owner of the suit vehicle.
2. Remedies available to the parties.

Resolution of issues;

Whether the plaintiff is the lawful owner of the suit vehicle.

Swalleh Abdallah; who is the plaintiff's lawful attorney, testified in his witness statement, that the defendant was an employee of the plaintiff company working as a procurement manager from **2012 to October 2013** before his employment was terminated by the plaintiff. Before the termination of the defendant's employment with the plaintiff, the plaintiff company entered into a contract with UN based offices at Entebbe to collect garbage; and therefore, it was necessary

for the plaintiff to import vehicles in order to perform the contract. The Vehicles were needed urgently, and since the plaintiff company did not have a TIN number, the defendant as procurement officer advised that the company could use his individual TIN number, and the plaintiff agreed to the suggestion. The plaintiff's directors processed the payment and importation of the vehicles, and the defendant advised that the vehicles would be registered in the company's names immediately upon obtaining the company TIN number. However, the defendant registered the suit Vehicle in his own names and upon the directors of the plaintiff company realizing this, they demanded that the defendant changes the registration into the names of the plaintiff company, but the defendant did not heed. The suit Motor vehicle was impounded and has been packed at Kibuli CID headquarters to date.

Counsel for the plaintiff submitted that the defendant had never owned the suit vehicle, and that his registration on the log book was done fraudulently. Basing on the correspondences in respect of the purchase and importation of the motor vehicles, [EXH P1-P5], the plaintiff is the lawful owner of the suit vehicle.

I have considered the evidence adduced and the submissions of Counsel for the plaintiff on this issue, and I have reached my decision as follows;

Under the provisions of **Section 30** of the **Traffic and Road Safety Act, Cap 361**, the person in whose name a motor vehicle is registered shall be presumed to be the owner of the motor vehicle unless the contrary is proved. In *Musoke v Ali Bhai Garage Limited [1960] 1 EA 31*, it was held that a motor car registration book is prima facie evidence of ownership. Therefore, the fact that the motor vehicle in issue was registered in the defendant's name raises a presumption that he is the owner of the motor vehicle. However, this presumption of registration is a rebuttable one and therefore is not conclusive evidence of ownership.

From the correspondences surrounding the purchase and importation of the suit motor vehicle, it appears to me that the defendant has never, at any material time, been the owner of the suit motor vehicle. The Tax invoice for the shipment [EXH P3 (f)] was addressed to the plaintiff as 'the customer', and all the email correspondences surrounding the purchase and shipment impliedly and directly point to the fact that the Motor Vehicles were purchased and imported for the plaintiff. From the email dated **6th September, 2012**, sent by the defendant in regard to the

shipment of the motor vehicles, including the suit motor vehicle, he indicated to the recipient of the email that the Bill of lading and shipping documents needed to be in his names because he already had his individual TIN number, whereas the company did not have one. Therefore, if the documents were amended otherwise, it would not be possible to clear the goods (motor vehicles) in Uganda.

I find that although the motor vehicle was registered in the defendant's name, it was exclusively owned by the plaintiff at all material times. The defendant took advantage of the fact that the plaintiff did not have a TIN number and registered the motor vehicle in his own name using his capacity as the plaintiff's procurement officer. Therefore, the fact of registration did not impute ownership of the motor vehicle upon the defendant.

Accordingly, this issue is answered in the affirmative.

ISSUE 2.

Remedies available to the parties.

The plaintiff prayed for the following remedies;

- a. A declaration that the plaintiff is the lawful owner of the suit vehicle Toyota Hilux Single Cabin Registration No.UAS 670F.
- b. A declaration that the defendant fraudulently got himself registered as the owner of the suit vehicle.
- c. An order that URA cancels out the names of the defendant and replaces it with that of the plaintiff company.
- d. An order that the suit vehicle be released from police and be given back to the plaintiff's company.
- e. A permanent injunction against the defendant undertaking any dealing with the suit vehicle.
- f. General damages
- g. Costs of the suit.

General damages;

Counsel for the plaintiff prayed for general damages to be awarded to the plaintiff. He availed a number of authorities in relation to an award of general damages, but did not state their relevance to the present case. He did not bother to justify the award for this prayer.

The above notwithstanding, Abdullah Swalleh (The plaintiff's lawful attorney) testified of the inconveniences the defendant had caused the company. It was Abdallah's testimony that the defendant got him arrested by police when he was driving the suit vehicle, and the vehicle was handed over to the defendant. After a period of three months, he saw the suit motor vehicle in Entebbe and several changes had been made on it; the motor vehicle was impounded at a money lenders place. It is my opinion that the defendant caused the plaintiff inconvenience and therefore the plaintiff is entitled to an award of general damages.

I therefore award the plaintiff **UGX 6,000,000/=** as general damages.

In the final result, judgment is entered for the plaintiff as follows;

- a. A declaration that the plaintiff is the lawful owner of the suit Motor vehicle.
- b. An order that the registration of the suit Motor Vehicle be changed into the plaintiff's name.
- c. An order that the suit Motor Vehicle be released from police to the plaintiff.
- d. A permanent injunction is issued against the defendant from undertaking any dealing in relation to the suit motor vehicle without the plaintiff's permission.
- e. General damages Of UGX 6,000,000/=.
- f. Interest of 12% on the award of general damages from the date of judgment till payment in full.
- g. Costs of the suit are awarded to the plaintiff.

It is so ordered.

Elizabeth Musoke

JUDGE

18/09/2015