

TANZANIA / JUDGMENT

rk trucking ltd vs sabihi rashid nokolageanother 2022 tzhccomd 21 23 february 2022

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23 February 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT DAR-ES-SALAAM COMMERCIAL CASE NO. 68 OF 2020 R&K TRUCKING LTD..... PLAINTIFF VERSUS SABIHI RASHID NOKOLAGE 1st DEFENDANT JOE OCEAN CLEARING & FORWARDING CO. LIMITED '2.n,d DEFENDANT Last Order: 30th Dec. 2021 Judgement: 23d February 2022 v

JUDGEMENT

NANGELA yx \A \ TheCPlaintiff, a limited liability Company registered and Incorporated under the Companies Act, Cap.212 R.E 2019} is jointly and severally suing the Defendants claiming for payments of, among others, USD 36,400.00, being losses suffered by the Plaintiff owing to conversion and unauthorised use of the Plaintiff's Truck with registration front Plate No. T256 DHL and Trailer No.T579 DHM. The Plaintiff is praying for Judgment and Decree against the Defendants as follows: Page 1 of 31

1. That, the Defendants be ordered to pay the Plaintiff USD 200.00 (per trip for loading and off-loading of the cargo.
2. An order for payment of a total of USD 36,400/- for non-use of the Payment Truck fromof10accrued Port^charges th April 2020 to-date. subject
3. An orderto for assessment^ payment of a sum of TZSorder An for payment.of^an 50,000,000.00 as interest general at a rate4f Sr^orT^ USD damages for loss of business.
4. 36,4Q0-inM;ull and^21%)rate for the full 5. TZS^ 50,4)0^000.00 in /^respectively from the date of \x x defabl "until the date of Jg^ement. 6\ ArTorder for payment of an interest /dn the Decretal amount at Court rate of 7% per annum from the date of Judgement to the date of full satisfaction.
7. Costs of this suit.

8. Any other relief as this Honourable Court may deem fit and just to grant. Page 2 of 31 Upon service of the Plaintiff, the 2nd Defendant filed a written statement of defence (WSD) on the 1st of September 2020. The 2nd Defendant did as well raise a counter-claim and a preliminary objection. However, the preliminary objection raised by the 2nd Defendant was later, on the 20th October 2020, withdrawn from the Court. Since the 1st Defendant's whereabouts could not be established, despite there being a summons issued by way of publication, and given that he did not file his WSD, the case had to proceed ex-parte against him. On the 10th of December 2020, following a prayer by the learned counsel for the Plaintiff, the Court issued an order that, the Plaintiff's Truck No. T256 DHL and Trailer No. T579 DHM, together with its cargo (if any), be discharged from the Port's/Police Post, where it was withheld. The parties were ordered to proceed to mediation and the mediation process was unsuccessful. Consequently, on the 31st May 2021, a final pre-trial conference was convened and the following were agreed issues which called for the attention of this Court:
 1. Whether the Defendants were legally authorised by the Plaintiff to use the Plaintiff's Truck with registration front Plate No. T256 DHL and Trailer NO. T579 DHM. Page 3 of 31
 2. If the 1st issue is in the negative, whether the use of the Plaintiff's Truck Plate No. T256 DHL and Trailer NO. T579 DHM amounted to conversion.
 3. Whether the Plaintiff's order to detain the 2nd Defendant's cargo was lawful.
 4. To what reliefs are the parties, entitled. On the 18th day of October 2021, the Plaintiff's case commenced. The Plaintiff's only witness, Yassin Salehe Hassan, who testified and had earlier filed his witness statement in accordance, with the applicable rules of this Court. (In his statement, which he tendered and was received, his testimony in chief, Pw-1 stated that, the Plaintiff engages in the business of logistics and transportation and operates a fleet of trucks for hire within the City of Dar-es-Salaam. According to Pw-1, on average use per day, the Plaintiff's trucks' single trip for hire within the City of Dar-es-Salaam is charged between USD 200/- and USD 400. He submitted in Court a Tax invoice and delivery Notes evidencing his assertion as exhibits and these were admitted as Exh. P3 (a) and (b). Pw-1 further testified that, it is the custom, practice and usage in the business of truck hiring that, when one is hiring a truck, he must place an order for that service by notifying the officials of the company owning the truck, and, that, upon acceptance and making the requisite payments, the company would release the truck(s) for use. Pw-1 did confirm the assertions that, the truck with registration front Plate No. T. 256 DHL and Trailer No. T.579 DHM belonged to the Plaintiff. He tendered in Court the vehicle's registration cards which were admitted into evidence as Exh. P.1. He told this Court that, on the 11th April 2020, the Plaintiff's Truck, with registration No. T256 DHL and Trailer No. T579 DHM went missing. Pw-1 testified that, on that day, there was no record that it was hired. However, upon reporting the incident to the Police and in continued search, it was dawned on the Plaintiff that the missing truck had been abandoned at the Dar-es-Salaam Port Area and,

was under the custody of the Port's Police. Pw-1 told this Court that, upon further inquiry, the Plaintiff was able to retrieve copies of export order and certificate from Tanzania International Container Transport Services (TICTS), as well as receipts showing the name of the 1st Defendant, who was the driver and the 2nd Defendant, who was the cargo owner. The TICTS documents were received as Exh.P.2. Page 5 of 31 Pw-1 stated further that, in view of Exh.P.2, it was evident to the Plaintiff, that, on the 10th April 2020, the 2nd Defendant had colluded with the 1st Defendant, the driver employed by the Plaintiff, to use the Plaintiff's Truck, with registration No. T256 DHL and Trailer No. T579 DHM to ferry the 2nd Defendant's container load of cotton seed husks. According to him, such a business deal was never disclosed to the Plaintiff and the Plaintiff never had any agreement with the 2nd Defendant for the use of the Plaintiff's Truck, with registration No. T256 DHL and its Trailer NO. T579 DHM. Pw-1 testified that since the truck was under the custody of the Port Police Station and loaded with the 2nd Defendant's cargo, the Plaintiff suffered loss of deprived income worth USD 200 per trip, as well as loss of use of the said truck quantified at USD 400 per day for the total of 23.6 days; these are the number of days the truck remained at the Port/Police, together with liability arising as well as charges and fees accruing from the abandoned truck. It was a further testimony of Pw-1 that, the Plaintiff issued a demand note to the 2nd Defendant, demanding costs of each trip lost per day, storage charges, accrued amount for non-use of the truck due to its retention at the Port's Police amounting to USD 200 per trip per day, plus USD 600 per day for loss of income of TZS Page 6 of 31 50,000,000/- as of 5th May 2020. Pw-1 tendered the demand notice which was admitted as Exh.P.4. Upon being cross-examined, Pw-1 told this Court that, as the Plaintiff's transport officer (TO), he was in-charge of all trucks. He admitted to know the 1st Defendant as an employee of the Plaintiff and, that, currently, the 1st Defendant is nowhere to be traced, and the Plaintiff reported him to the Police. Pw-1 told this Court that, the Plaintiff maintains a procedure of hiring its trucks which includes knowing the type of the cargo, the place where it was, the route involved and the related safety issues before agreeing on the payments. He emphatically maintained that, all customers intending to hire a truck have to engage with authorised personnel and in the Plaintiff's office. He stated as well that the 2nd Defendant was never authorised to enter into agreements with outsiders and had no mandate of even knowing that the car he drove was contracted for. Nonetheless, Pw-1 maintained that, the 1st and 2nd Defendants breached the Plaintiff Company's procedures of hiring trucks since all businesses are concluded not outside but in the Plaintiff's office. Concerning who the 1st Defendant was, Pw-1 denied that, the 1st Defendant was ever an agent of the Plaintiff but, that, he was a mere employee (driver). He emphasized that, the 2nd Defendant ought to have come to the Plaintiff's office to hire the services. Pw-1 further stated that, the Plaintiff's claims are based on the fact that the Plaintiff found the truck working for the 2nd Defendant and at the port area while the Plaintiff had not authorised its use. During re-examination, Pw-1 told this Court that, the Plaintiff brought the case before this Court because the 2nd Defendants flouted the procedures of hiring the truck and that, the whole time the truck remained at the port was almost 236 days. He emphasized that, the Plaintiff had never worked with the 2nd Defendant. He told the Court that, having

reported/that- the-xcar was missing and, when n Z\ Xv' they found it detained at thexPolice, the Plaintiff had no mandate over thexPqliGe^r^natter, they needed an order of the Couryorelease tfie4ruck, and that order was obtained sometimedn D^ember 2020. (I In short, that was the Plaintiff's case. At the closure \ of the^PIgintiff's case, the Defendants' case opened. As I stated earlier, it was only the 2nd Defendant who entered appearance as the case against the 1st Defendant proceeded ex-parte. At the hearing, the 2nd Defendant brought two witnesses, one Ms Rehema Kessy and Mr lie Qi, who testified as Dw-1 and Dw-2 respectively. Page 8 of 31 Both have filed Witness Statements in accordance with the requirements of Rules of this Court. In her witness statement, which was tendered and received in Court, Dw-1 testified that, she used to work for the 2nd Defendant as an Operation's officer. She told this Court that, on 10th April 2020 she supervise the loading of cargo in a 40 feet Container NO.TLLU4571658 for export to China. She told the Court that'thesassignment could not be completed due to some errors ancv-that, on the 11th April 2020 a /few '^dib^/Invoice No.TLLU4571658 ready for shippings Chipa. Dw-1 told this Couri'ithat, since their truck was away in Shinyanga, she was^approached^by the 1st Defendant who was driving the^intifPs\Truck, with registration No. T256 DHL an(^ailer-No.T579 DHM. She told this Court thatrthei 1st Defendant offered to transport the contai.ner>fromKurasini to the Port, for TZS 200,000/=. According to^Dwz-l, the 40 feet container was stuffed with cotton/iugks^worth TZS 6,660,000. Dw-1 told the Court that, on the 12th April 2020, she was informed via a phone call that, the particular container destined for export to China was detained at the Port Police Post for investigation on the Orders of the Plaintiff and, that, the 1st Defendant was at large. She told the Court that, when she tried to engage with the Plaintiff the latter Page 9 of 31 demanded to be paid TZS 50,000,000 if the Cargo was to be released for export. When the 2nd Defendant made an offer to pay TZS 4,000,000/- that offer was declined and the Container NO.TLLU4571658 was not released leading to failure to export it and total loss of its cargo's value. She stated that it is the Plaintiff who should instead pay the 2nd Defendant for the losses suffered. On cross-examination, Dw-1 told tfHsxCourt dthat, ordinarily there are drivers at the ICD's^whoarff^frequently engaged by customers to ferry their cargo lahd^that, the 1st Defendant was one of them^v^r^d ^to, ferry the 2nd Defendant's container to the Port^for TZS 200,000/= as his pay. x* Inst^jction/Duriog re-examination, Dw-1 maintained that, the contrgctjshe entered with the 1st Defendant was an oral contract. For his part, Dw-2 testified and told this Court that, he is the Managing Director of the Defendant. He told this Court that, on the 10th day of April 2020 the Defendant hired a truck with registration No.T.256 DHL and its trailer No. T.579 DHM through its driver, the 1st Page 10 of 31 Defendant. The hiring was for the purposes of transporting a 40 feet Container No.TLLU4571658 from Kurasini Temeke Dar-es-Salaam to the Dar Port for export to China. According to Dw-2, the parties agreed that the price for the service was TZS 200,000/=. He stated that, if he would have failed to export the container, the Defendant was to record a loss of USD 30,724. Dw-2 stated further that, the cotton husks he was exporting vtf^e worthyTZS 6,660,000/=. Dw-2 went on to telKthis Courbtha't, on the 11th April 2020, he received infom^tibji/while in Shinyanga region that, the Container^No;TLLU4571658 was being held at the Po.rt^Police.

Station" for investigation on the Plaintiff's orders. He tried to contact the Plaintiff with intent to resolve the claim but all efforts proved futile. Zk \ y and, in the end, the Container NO.TLLU4571658 was not exported, hence causing loss to the Defendant, including damage to the product, port charges as well as loss of credibility to the Defendant's clients. Vurjra/cross-examination, Dw-2 did acknowledge that, he ought to have known who was transporting his container. He also stated that, he was unacquainted with the driver (the 1st Defendant). He further told this Court that, the Defendant does not maintain a hired driver to transport its containers. He however stated that, the Defendant does authorise its employees to enter into Page 11 of 31 binding agreements for and on behalf of the Company although not in every transaction. Dw-2 told this that, when transportation is sourced from various transporters the Defendant issues them with an invoice and effect payments. Dw-2 told this Court, therefore, that, it was he 2nd Defendant who hired the truck through one of its employee and he does not know the owner and did not know how it was hired. Dw-2 denied to have been negligent for not knowing the driver from who the truck was hired but he understands that, as a general practice, many transporters shuttle from the ICDs to the Port. He lamented, however, that it was the Plaintiff who was responsible for the truck which the Defendant had hired, and that, the Plaintiff claimed a huge amount from the Defendant. On being re-examined, Dw-2 told this Court that it was Dw-1 who hired the truck as an operations in charge and that, the value of the cargo was about \$7000. He asked the Court that, his Company be paid the losses it has suffered. He told the Court that the respective container was released and, that, the Defendant paid demurrage charges, an amount he cannot remember. So far, that was the Defendant's case. Upon closure of the Defence case, the parties prayed to file closing submissions. I will consider those Page 12 of 31 submissions alongside the testimonies of the witnesses who testified for each of the parties, as I analyse their testimonies and the available evidence before rendering my verdict. From the facts of this case, the nature of the Plaintiff's major complaint is conversion and unauthorised use of his Motor Vehicle. Having defined the nature of the complaint at hand, let us examine whether the facts and evidence establishes it or not. In this case four issues have been raised, which I will address shortly. I will take into account the evidence and the submissions made by the parties. The first issue is: Whether the Defendants were legally authorised by the Plaintiff to use the Plaintiff's Truck with registration front Plate No. T256 DHL and Trailer A No. 79D M. Essentially, there is no doubt that the truck with registration Trant Plate No. T. 256 DHL and Trailer W J/ No. T.57.9 DHM are the properties of the Plaintiff. Exh.P.1. According to the testimony of Pw-1, the truck and the trailer in question went missing on the 11th April

2020. Pw-1 told this Court that, the truck and its trailer were driven by the 1st Defendant, who is/was an employee of the Plaintiff. Page 13 of 31 It was also the testimony of Pw-1 that, the truck was detained at the Police Port Station following the reporting of its missing by the Plaintiff, and that, it was found to be carrying a cargo belonging to the 2nd Defendant. The testimony of Pw-1 was categorical that, that, on the material date when the truck went

missing, the Plaintiff had no deal, whatsoever, with the 2nd Defendant and, had not, in any manner whatsoever possible, authorised the 1st Defendant to enter into a contract of carriage with the 2nd Defendant. The evidence of Dw-1 and Dw-2 all point to the fact that, they engaged the 1st Defendant to provide them with the truck hiring service* and to transport their 40 feet container from Kurasini area to Tememeke to the Port and away that, the agreement being oral was not between the 1st Defendant and the Plaintiff but the 2nd Defendant and the 1st Defendant. On the basis of the above stated position, and since the 1st Defendant was an employee of the Plaintiff, was the 1st Defendant acting under the authority of the Plaintiff? The fact according to the testimony of Pw-1 is that, the 1st Defendant was a mere driver employed to drive the truck. Indeed, the driver was not and could not be regarded as the owner of the truck but was rather merely in the immediate possession of it by virtue of his employment. It Page 14 of 31 means therefore that, being not the owner of the truck and its trailer, anything to do with the hiring of the truck was not vested in the driver's authority. The above finding is indeed supported by the testimony of Pw-1 who also testified that the 1st Defendant being the driver was as well not authorised to enter into any agreements involving the hiring of the truck and its trailer, as all truck-hiring transactions are done at the Plaintiff's office. Generally, much as one may argue that the driver (1st Defendant) was an agent of the Plaintiff, since he was not authorized to enter into contracts involving the hiring of the truck he was driving (as all such matters dealt with by his employer only as per the testimony of Pw-1) it means that, he acted outside his mandate. Anything done without authority of the owner is contrary to basic norms of the law of agency and, hence, cannot be imputed on the Plaintiff (the Principal). As a matter of law, a contract which has been entered into by an agent who did not have the authority to do so will be invalid and non-binding on the principal. From the above position, it follows that the 2nd Defendant was not authorised by the Plaintiff to use the latter's truck as the two had no contract whatsoever involving the Plaintiff's truck. The use by the 2nd Defendant Page 15 of 31 on the basis that he concluded a contract with the 1st Defendant, who was not authorised to enter into such a contract, amounted to an unauthorised use. It follows, therefore, that, the first issue is responded to in the negative. The Defendants had no authority to use the truck and its trailer in the execution of a contract which was unknown to the Plaintiff and unapproved by Plaintiff. The second issue was dependent on the first issue. It was to the effect that: If the first issue is in the negative/- whether the use of the Plaintiff's Truck Plate No. 56TDHX and Trailer No. T579X DHM amounted to conversion. As I stated herein above the nature of this case is the tort of conversion. From a general perspective of the case at hand, the ultimate issue, therefore, is whether, on the basis of the testimony of Pw-1, there was sufficient evidence on the facts and, the available materials at hand, to conclude that, the tort of conversion had been established or not. Before we delve on that, it will be more appropriate, perhaps, to define what the Courts; from a general perspective, have so far stated regarding what the tort of conversion is all about. In the Australian case of *Penfolds Wine Pty Ltd vs. Elliott* (1946) 74 CLR. 204, the following were stated Page 16 of 31 by the High Court. In particular, Latham CJ defined conversion as referring to: "the unauthorised

assumption of the powers of the true owner." On the other hand, Dixon J was of the view that: "the essence of conversion is a dealing with a chattel in a manner repugnant to the immediate right of possession of the person who has the property or special property in the chattel". In yet another Australian case of *Banks vs. Ferrari & Ors* [2000] NSWSC 874, Bowdler J held that: "conversion essentially consists of a positive wrongful act of dealing with goods in a manner which is inconsistent with the rights of the owner. This must be coupled with the intention of denying the owner's rights or asserting a right that is inconsistent with them". In the English case of *Fouldes v Willoughby*

- (1841) 151 ER 1153, however, the Court was of the view that: Page 17 of 31 "a mere wrongful asportation of a chattel does not amount to a conversion, unless the taking or detention of the chattel is with intent to convert it to the taker's own use, or that of some third person, or unless the act done has the effect, either of destroying or changing the quality of the chattel". Perhaps a better understanding of the law regarding conversion, may be observed in what was succinctly and comprehensively set out by the majority in the case of *The Commissioner of Police and the Attorney General vs. Vassell Lowe*, [2012] JMCA Civ 55. In that case, the majority, had the following to say, at paragraph 5 - [3,8] of his judgment: "[65] ...The learned trial judge had placed reliance on the definition of conversion in the 21st edition of *Salmon & Houston's Law of Torts*... 'A conversion is an act or complex series of acts of which willful [sic] interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it/'
- [36] In addressing the elements required to constitute conversion the learned authors provide a brief and useful history of the tort, stating, inter alia, that, there are three distinct ways by which one man may deprive another of his property and so be guilty of conversion, namely (1) by wrongly taking it (2) by detaining it and (3) by wrongly disposing of it. Historically, the authors state the term conversion was originally limited to the third mode merely to take another's goods; however wrongful, was not to convert them. However, in its modern sense, the tort includes instances of all three modes and not of one mode only. The authors point out that two elements combine to constitute willful interference: (1) dealing with the chattel in a manner inconsistent with the right of the person entitled to it Page 19 of 31 and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right (see *Caxton Publishing Co v Sutherland Publishing Co* [1939] AC 178, 189 and *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204, 229) ...
- [37] The courts have determined that in the absence of willful and/or wrongful interference there is, no conversion if the negligence of the defendant the chattel is lost or destroyed (see *SV 17 v [1937] 2 KB 242*) and the authorities show that every person is guilty of a conversion who without lawful justification takes a chattel out of the possession of anyone else with the intention of exercising a permanent or temporary dominion over it because the owner is entitled to use it at all time (see *Fouldes v*

Wiitoughbf)...Butt a mere taking unaccompanied by Page 20 of 31 an intention to exercise dominion is no conversion. Further, the detention of a chattel amounts to conversion only when it is adverse to the owner or other person entitled to possession - that is, the defendant must have shown an intention to keep the thing in defiance of the owner-6\ person entitled to possession. The usual way of provingX^haba^ detention is adverse^withi^me' meaning of this^ruleJsJto snow that the pal^y entitled demanded the delivery ofcXthe chattel and the K defendant ^/refused or Neglected to comply with the demand.. T3\$]^Ns evident that the key to the establishment of the tort is wrongful interference or unjustifiable interference with the chattel so as to question or deny the owner's title to it (see Kuwait Airways v Iraqi Airways [2002] 2 AC 883)..." [Emphasis added]. Page 21 of 31 From the above long excerpt, the following questions need to be responded to in relation to the case at hand. The first question is: whether it can be said that the 1st and 2^ Defendants took the chattel (truck and its trailer belonging to the Plaintiff) out of the possession of the Plaintiff without lawful Justification and with the intention of exercising a permanent or temporary dominion over while its owner (the Plaintiff) was entitled~to\use it at all time. \ x \ X no justification whatsoever to>use ?tlie truck for errands XX vX which were exclusively unknown>and unauthorised by the \ V Plaintiff. Even ifs^was^ot a permanent taking or deprivationylhe) temporary dispossession of it from the zx\ Plaintiff:s-use<sufficiently establishes the first requirement in proving the tort of conversion. It was an unjustified interfereqre/o a chattel for which a claim may be laid since its owner (the Plaintiff) was entitled to use it at all time. The second question is: whether the 1st and 2^ Defendants dealt with the chattel (the truck and its trailer) in a manner inconsistent with the right of the Plaintiff who Page 22 of 31 was entitled to its use at all times. This question is also affirmatively established. According to the testimony of Pw-1, at no material time was there any contract of carriage (haulage) between the 2nd Defendant and the Plaintiff, a fact which was also supported by the 2nd Defendant in his testimony during cross-examination. The agreement which Dw-1 and Dw-2 claimed to have concluded with the 1st Defefidant was> as I stated earlier, void ab initio since, as Pw-1 statecLin his e y testimony, the 1st Defendant had no authprity'to-enter into such a contract. K It follows, therefore,/that, the use'of the truck and its trailer, was inconsistenrwtin the Plaintiffs right to its use at all times. PvM. te\$ti^ th^t, on the 10th of April 2020, the truck went missipg/at the time when the Plaintiff wanted to^^^ltisedjfor his business. Its non-availability was ineonsistent'to-tfie Plaintiff's right to use it at all times as rfewishesX y utsmeans, as well, therefore, that, the 1st and 2nd Defendants had intentionally, even though temporarily, asserted their dominion over the truck and its trailer, a fact which was inconsistent with the Plaintiff's rights over the truck. From the foregoing discussion, there is no doubt that the elements proving the wrongful act of conversion are fully established and, the second issue which was agreed Page 23 of 31 upon in this case, i.e., "If the 1st issue Is in the negative, whether the use of the Plaintiff's Truck Plate No. T256 DHL and Trailer N0.T579 DHM amounted to conversion", is responded to in the affirmative. The third issue is: Whether the Plaintiff's order to detain the 2"1 Defendant's cargo was lawful. Essentially, if proved in the negative, the above stated issue No. 3 is meant to respond to theclaims raised by the 2nd Defendant in the counter^cl^m^s^iwi^the

testimony of both Dw-1 and Dws2, it is stated that, the Container NO.TLLU4571658 (and its cargo) was held at the Port Police Station for CinvStigadori on the Plaintiff's orders. Pw-1, however, denied that the Plaintiff had (A XsZ ordered the Police to Afetaim the cargo. As a matter of legal principle, he wh^llegeS'-musV'prove. It is^unfortunate^ however, that, although the 2nd Defender^ has~maintained an assertion in its pleadings, which assertiori\yvas also reiterated in the testimonies of \ M > Dw-V^QdDw-2, the Container No.TLLU4571658 and its cargo was held at the Port Police Station for investigation on the Plaintiff's orders, no evidence whatsoever was adduced to back the allegations. In any case, the assertion was unsubstantiated hearsay which has no value in evidence. Be that as it may, what Pw-1 told the Court was that, the truck and its trailer were detained at the Police Page 24 of 31 Station after the Plaintiff reported to the Police when it went missing on the 10th April 2020. Pw-1 found out later informed that it had been detained at the Port Police Station and was in the custody of the Police, until when a release order by the Court was issued. In my view, the 2nd Defendant has nothing to claim from the Plaintiff. If any loss was registered on the part of the 2nd Defendant, that is something of his^oyvi^maklijcj as he preferred to operate clandestinely by engaging the 1st Defendant in total disregard of the fprocaures-which ought to have been followed had the.22d Defendant, contacted the Plaintiff. Moreover, and^according^Pw-1, all contacts of the Plaintiff could be^readfiy^obtained on the side of the truck-door or tIT^Defendant could as well take the 2nd Defendant^Tie^Pla^ntiff's office. The 2nd Defendant shoujdciwe^be&^wary of taking shot-cuts since the old adage which)saysz"c/7eap is expensive always comes true. \ w The thjrdjssue is therefore in favour of the Plaintiff since the 2nd Defendant has not been able to prove that the Plaintiff did issue orders to the Police. I even venture to state, further, that, even if the Police detained the vehicle and its cargo at the orders of the Plaintiff, a fact which I have ruled out since the Plaintiff had no such authority to issue orders to the Police, still the Page 25 of 31 2nd Defendant would have failed in its bid to lay blames and claims on the Plaintiff. In the case of Saranji vs. Attorney-General [1970] E.A347, for instance, the High Court of Uganda dealt with a somewhat similar case. The brief facts of the case were that, a car dealer bought a car innocently and for value and subsequently sold it to the plaintiff. However, the respective car had been stolen and had a forged registration ca^d. The police took the car from the plaintiff and returned ft'txxjtsArue owner without securing a magistrate'skprde^to return damages for wrongful deterition or conversion. In dealing with .the'ma^-"■"TiCourt was of the view that: "There ^wefe no criminal proceedings in this case. There is ho-evidence as to why there were no criminal proceedings. And, in any event.... There is no ground for holding that the police were wrongdoers for any other reason. The police are charged with the duty of prosecuting criminals and recovering stolen property. The car was presumably reported to the Uganda Police as having been stolen. The plaintiff has said that Page 26 of 31 the police officer who took away the car told him that the car had been stolen. The car was taken away by the police for the purposes of investigation in the course of their duties." [Emphasis added]. In my view, a similar finding is warranted in this case at hand, regarding how the Police got involtfeddn detaining the respective truck and its trailer ar^|oJtoxspeaK the cargo in the container which was^tfeing tr^psporteKby the

said truck. If the 2nd Defendant was on the, right-path he ought to have filed a matter in Court, be it an application or what is it, and proceed for the release of the cargo. Unfortunately! that was not a one, and, being on the XX \S y erring side, the 2nd Defendant cannot heap blames on or even raise any claim against the Plaintiff. Indeed as correctly submitted by the learned counsel for the Plaintiff, the Latin doctrine of 'Ex turpi causa non oritur actio' which simply means that, "from a dishonorable cause an action does not arise", will apply on the 2nd Defendant's counterclaim. The final issue is: To what reliefs are the parties entitled. Page 27 of 31 Essentially, "damages" is the primary remedy for the tort of conversion. Taylor and Owen JJ in *Butler vs. Egg Pulp Marketing Board* [1966] ALR 1025 stated that: "the general principle upon which compensatory damages are assessed, whether in actions of contract or of tort... is that the injured party should receive compensation in a sum which as far as money can do so, will put him in the same position as he would have been if the tort... not been committed. This principle is applicable to actions of conversion as it is to the case of other actionable wrongs." In this case, the Plaintiff has claimed from the 1st and 2nd Defendants, jointly and severally, payment of damages (both specific and general). In particular, the Plaintiff has claimed payment of specific damages in form of loss of use as follows:

- (a) Payment of a sum of USD 200/ per trip for loading and offloading the cargo.
- (b) Payment of USD 36,400.00 for non-use of the truck from 10th April 2020 to date. Page 28 of 31 As a matter of law, it is trite that specific damages must be strictly pleaded and proved. The case of *Zuberi Augustino Mugabe vs. Anicet Mugabe* [1992] T.L.R. 137 and *Stanbic Bank Tanzania Ltd vs. Abercrombie & Kente (T) Limited*, Civil Appeal No.21 of 2001 (CAT) (unreported), laid emphasis on that fact. Moreover, in the *Xiubao Cai and Maxinsure (T) Ltd vs. Mohamed Said Kiaratu*, Civil Appeal No.87 of 2020, this Court, exploring what special damages entail, stated, and quoting from other persuasive and authoritative sources, that: "Special damages are such as will not be presumed by law. They are special expenses incurred or money actually lost. For example, the actual expenses of a plaintiff or a party actually incurred up to the date of the hearing are all styled as special damages; for instance, in personal injury cases, expenses for medical treatment, transportation to and from hospital or treatment centre, etc...." Turning to the case at hand, it is clear from the Plaintiff's pleadings that, the Plaintiff did plead for payment of such damages. In an endeavour to justify that the Plaintiff's charges are an average amount of about USD 200 and USD 400 per trip whenever its vehicles are hired, the Plaintiff tendered in Court, Exh.P3 (a) and (b). Page 29 of 31 Essentially, even though Exh.P3(a) and (b) were not directly related to the case at hand, the same were a demonstration of the rates for which the Plaintiff charges all its customers, and, for that matter, this Court finds that these Exh.P3(a) and (b) are relevant and admissible. I am satisfied therefore that, the claim for specific loss (damages) are justified. However, the same can only be paid up to the date where the truck and its trailer were released by Court order, i.e., from 10th April 2020 to 10th of December 2020 (240 days), which will amount to (USD 200x 240 days= USD 48,000/ V, As regards the claim for general damages, the Plaintiff has asked for TZS

50/000,000. Ordinarily, it is not for the Plaintiff to set out the amount payable as general damages. The assessment is left to the Court in exercise of its discretion. In my assessment and considered opinion, however, I see no reason as to why the Plaintiff should be paid that sum given that the losses for non-use of the Truck in question are already subsumed in the claim for specific loss in the form of specific damages. I decline granting that prayer. On the other hand, I decline as well to grant the Plaintiff's claim for accrued port charges because the same Page 30 of 31 have not been substantiated. In the upshot, the judgement is granted in favour of the Plaintiff as follows:

1. That, the Defendants are to jointly and severally pay the Plaintiff USD 48,000/- as special damages for the losses suffered due to the non-use of the Plaintiff's Truck for days 240.
2. That, the Defendants are to pay interests on the above sum at a rate of 12% from the 10th April 2020 to 10th December 2020.
3. The Defendants are to pay a further 7% p.a, interest on the decretal sum from the date of this judgement to the date of full satisfaction of the decree.
4. Defendants are to pay costs of this suit.
5. The counterclaim is hereby dismissed. It is so ordered DATED at DAR-ES-SALAAM, this 23rd DAY OF FEBRUARY 2022 HON. DEO JOHN NANGELA JUDGE Right of Appeal Explained Page 31 of 31

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