

UGANDA / JUDGMENT

Kemirembe v Attorney General

(CIVIL SUIT NO. 200 OF 2010)

[2020] UGHCCD 173 (10 June 2020)

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COURT

HC: Civil Division (Uganda)

BEFORE

Mugambe, J

CASE / FILE NUMBER

CIVIL SUIT NO. 200 OF 2010

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION) CIVIL SUIT NO. 200 OF 2010

KEMIREMBE ADRINE ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. ATTORNEY GENERAL

2. ANATOLI MULETERWA ::::::::::::::::::::::::::::::::::: DEFENDANTS

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

- 1. The Plaintiff brought this suit for; (a) return to her of motor vehicle Nissan Datsun Reg. No. UAE 130H pick-up, white in colour or its monetary value of Ug. shs: 12,000,000/=; (b) special damages of Ug. shs: 59,750,000/=; (c) general damages; (d) punitive/exemplary damages; (e) interest on (a) & (b) at a market rate from 14th November 2008 till payment in full; (f) costs of the suit and any other relief.
- 2. The Plaintiff was represented by Mr. Henry Rwaganika of Rwaganika & Co. Advocates. The first Defendant was represented by Ms. Harriet Nalukenge and Mr. Waluku Ronnie represented the second Defendant.

- 3. The Plaintiff was the registered owner of the suit vehicle Nissan Datsun Reg No. UAE 130H and was in possession of the same when it mysteriously went missing from Makerere University main library on 14th November 2008 where it had been parked by her husband Ssebagala Alex. The Plaintiff reported the missing motor vehicle at Makerere University police post under reference No. SD REF 28/14/1108 and also to Kampala central police station under reference No. ERU/999/CPSSD REF 15/29/12/0. Several police posts and stations around the country were involved in the search as well as the rapid response unit at Kireka.
- 4. The Plaintiff and Mr. Ssebagala made periodic checks at the Kampala central police station, its parking yard, put out radio announcements but this did not yield any positive results. On 26th April, 2010, Mr. Ssebagala found the suit vehicle parked in the Kisenyi area in Kampala district where it was being used for hire business. He hired the same and when they reached Makerere University police post, the driver and turn boy were arrested. The driver revealed that the vehicle belonged to the second Defendant who was the community liaison officer, Kampala metropolitan based at central police station in Kampala. He claimed that the vehicle was sold to him at an auction at Kampala central police station. He made a claim for the money he alleged to have spent on the vehicle purchase before he could return it to the Plaintiff.
- 5. In its written statement of defence, the first Defendant denied the Plaintiff's claim and averred that the Plaintiff is not entitled to the remedies sought in the plaint and it was to raise a preliminary objection to the effect that the Plaintiff's claim is bad in law, misconceived and the same should be struck out with costs.
- 6. In his written statement of defence, the second Defendant averred that he received a complaint from the custodian about the congestion in the store and the parking yard. He then applied to court for an order of disposal of unclaimed properties. The court having been satisfied issued a warrant of disposal of unclaimed properties. The court also appointed bailiffs trading as Mpiima Associates to conduct the public auction. He did not act in his personal capacity in disposing off unclaimed properties. He never withheld the car as it was never in his personal possession. Further that he would raise preliminary objections on point of law and fact that the suit was misconceived, does not disclose a cause of action against him, is vexatious and frivolous, he was wrongfully joined with the first Respondent and the suit be dismissed with costs.
- 7. The suit is brought against the Attorney General as the first Respondent under S. 10 of the Government Proceedings Act for the actions of the second Respondent who was a government employee working as a police officer.
- 8. During scheduling, the issues agreed for resolution were:
 - i. Whether the Defendants were negligent in failing to act on the Plaintiff's report of the loss of the suit vehicle.

- ii. Whether the motor vehicle was disposed of and if so whether the disposal was proper.
- iii. Whether the Plaintiff is entitled to the remedies sought. No preliminary objections were raised.
- 9. The parties proceeded by oral testimony. The Plaintiff testified as PW1. PW2 was her husband Sebagala Alex. PW3 was Ms. Esau Mutekanga, the Plaintiff's longtime friend who accompanied her to the meeting with the second Defendant. PW4 was Mr. Mutyaba Jamil, the driver of the suit vehicle. The second Defendant testified as DW1 and Mr. Lukweebe Ronald, the court bailiff who conducted the auction testified as DW2.
- 10. I have read all the pleadings, submissions and oral testimony of the parties. It is not disputed that the Plaintiff's car was stolen from the parking lot outside the library at Makerere University on 14th November 2008. The Plaintiff's husband who was driving the car that day was working on his dissertation in the library. The Plaintiff promptly reported the theft to police that same day and searches for the same commenced.
- 11. In an interesting twist of events, the Plaintiff's car ended up at CPS Kampala under unclear circumstances. It was then later allegedly sold off to a one Kizza Margaret, the wife of the second Respondent who is a police officer at Ug. shs. 1,000,000/=. It is important to note that this alleged sale took place at a time when the police was allegedly looking for the car. DW2 a bailiff who sold the car confirmed its sale through a police auction. The second Defendant who testified as DW1, was the police officer whose wife bought the car and took its possession. He claimed that the sale of this car was properly sanctioned by the court as it formed part of the list of unclaimed items that had over stayed at police in Exhibit D Exh1. Apparently this list was prepared by the store man at CPS and presented to court by DW1.
- 12. Needless to say the close relationship of wife and husband between DW1 and Kizza Margaret who bought the car demonstrates a conflict of interest in DW1's dealings in relation to this car.
- 13. However more striking is the contradiction of DW1's testimony when I look at the list of items the court authorized sale of and the list of items the auctioneer DW2 put up for sale. The Plaintiff's car is not listed in the court list - Exhibit D Exh1 but it's listed in the auctioneers' list for sale- annexure Dexh2.
- 14. There is no satisfactory explanation why or how the Plaintiff's car illegally got listed on the auctioneer's list that led to its illegal sale when it was not authorized by court in its order of 17th December 2009. It is easy to infer in the circumstances of this case that the second Defendant's hand was behind the grand scheme to illegally sale the Plaintiff's car.
- 15. It is near blasphemy that the second Defendant could stand in court on oath before me and insist that the sale of the Plaintiff's car was authorized by court whereas not. If he could lie in this aspect, one wonders which part of his testimony is truthful. Put simply DW2 was not a credible witness.

- 16. I find that the second Defendant a police officer, who was fully aware of the search operation for the lost car at the material time, was grossly involved in the misappropriation of the Plaintiff's said car. The Plaintiff's car was sold to the second Defendant's wife illegally.
- 17. The Plaintiff is entitled to recover its value of Ug. shs: 12,000,000/=, general damages for the inconvenience, pain and suffering occasioned to her. She is also entitled to special damages for the lost income because the car was used for hire and as a source of income. However while she and PW4 calculate this income at Ug. shs: 50,000/= per day six days a week, I consider that the car couldn't have been bringing full daily income all six days of every week and through the years. Some days would be unprofitable and it would have worn off and the days of earning income would have reduced through the years.
- 18. Taking these factor into account, in my discretion, I reduce the special damages claimed from Ug. shs: 157, 8000, 000/= to Ug. shs. 120,000,000 for loss of income.
- 19. In my discretion I will not award aggravated damages. Instead I will warn the second Defendant for his actions as a police officer. Issues one and two are resolved in the affirmative and the Plaintiff is entitled to remedies.
- 20. Based on all the above, the Plaintiff's suit succeeds with the following orders and declarations:
 - i. The Plaintiff is awarded the value of her car of 12,000,000/= (Uganda shillings twelve million only).
 - ii. The Plaintiff is awarded special damages of 120,000,000 (One hundred twenty million only) for the lost income.
 - iii. The Plaintiff is awarded general damages of Ug. shs 150 000,000/= (Uganda shillings one hundred fifty million only).
 - iv. Interest on (i) (ii) and (iii) above of 15% p.a is awarded from the date of filling this suit till payment in full.
 - v. The second Defendant is warned seriously to desist from using his office to the prejudice of unsuspecting citizens. In addition, the second Defendant shall pay Ug. shs. 50,000,000/= (Uganda shillings fifty million only) of the Plaintiff's total award or be committed to civil prison.
 - vi. Costs of the suit are awarded to the Plaintiff.

I so order.

Lydia Mugambe. Judge. 10 June 2020.

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