

UGANDA / JUDGMENT

M/S Urgent Cargo Handling Limited and Another v Uganda Revenue Authority (HCT-04-CV-CS-0026-2012) [2017] UGHC 121 (25 April 2017)

[2017] UGHC 121

COURT

High Court of Uganda

BEFORE

Kawesa, J

CASE / FILE NUMBER

HCT-04-CV-CS-0026-2012

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA ATMBALE

HCT-04-CV-CS-0026-2012

PLAINTIFFS DEFENDANT 1. M/S URGENT CARGO HANDLING LTD 2. GERRY
ANDREW MSAFHU :::::::::: VERSUS UGANDA REVENUE AUTHORITY ::::::::::

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The facts of the case are that plaintiffs motor vehicle KAS 322H/ZC 1076 with container MRKU 759632/2 was seized at Malaba Uganda boarder. The truck was impounded and detained at Busitema Customs Check Point where it is parked iodate. The second Plaintiff was arrested and detained at Malaba. police station for sometime then released on police bond.

The Plaintiffs claim general damages for trespass, special damages, interest and unconditional release of the truck.

November 2014, paragraphs 4 and 5 of the same, the facts above are pleaded. By plaint dated 11th

In the written statement of defence all the above allegations were denied save what was agreed upon by way of the joint scheduling memorandum.

At the hearing the plaintiffs led evidence through witnesses alongside Exhibits 1- 12.

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The issues for determination were;

- 1. Whether the plaintiffs had loaded uncustomed goods.
- 2. Whether Defendant unlawfully seized plaintiffs' motor vehicle and container.
- 3. Whether arrest of second plaintiff was lawful.
- 4. Remedies available.

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witnesses and exhibits to court and therefore had no evidence before court. The defendants did not conduct a defence to the suit, though they filed their written statement of defence and witness statements. The defence did not avail their

The Evidence Act categorically places the burden of proof of any fact upon he that alleges the existence of such facts (See Section 101-103) Evidence Act.

It is also the law in civil matters that the Plaintiff has the burden to prove their case on the balance of probabilities.

I will therefore determine this case on the basis of evidence as led by the Plaintiffs.

Issue 1: Whether Plaintiff had loaded uncustomed goods:

It was pleaded by the Plaintiffs and evidence led by them in court to support their proposition that there were no uncustomed goods found with the Plaintiffs by the defendant.

I have examined the pleadings and the evidence. Paragraph 4 of the plaint it is pleaded that defendant seized plaintiffs truck and grounded it at their parking yard at Malaba Customs Post from 08.7.2012 to date. *. . T'D*

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The second plaintiff was in the process detained by servants/agents of the defendant for some time and later released. However in the written statement of defence dated 4th December 2012, contents of paragraph 4 of the plaint are denied and put in issue.

The witnesses PW.1 Hosborne Ongoli Arungah stated that the information he received was that on 9th July 2012 the truck and its driver were seized by defendants. (Paragraph 15 of statement on oath). He contented in paragraph 20 that the truck was unlawfully seized and detained.

PW.2 Jerry Msafiri, the second plaintiff testified that he loaded hides and skins on the truck which later developed problems. He offloaded the cargo at Bweyogerere. He later proceeded with an empty truck which was intercepted and arrested by URA (Defendant).

Paragraph 12 of his statement on oath shows that they were arrested. The truck was forfeited at URA Customs yard. He was placed under custody in customs cells for 5 days; after which he was released on bond.

PW.3 Wilfred Ogollah Onyango confirmed that no seizure notice for the truck was issued.

The prosecution/Plaintiff also relied above contained in exhibits 1-12. on a set of exhibits explaining the events

From the above evidence, there is no rebuttal from the defence by way of evidence to sufficiently justify the allegations pleaded in defence under the written statement

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of defence. ^I do not find any evidence to satisfy the evidential burden of proof contained in the law per sections 101-103 Evidence Act.

Defendant had the burden to prove that at time of seizing the truck, it was carrying un-customed goods. The evidence contained in paragraphs 4(b) and 4(c) contradict each other. The truck is alleged to have contained wet salted hides and skin, under paragraph 4 (a) but in paragraph 4(c), it is alleged on interception at Malaba it was empty! The contents of paragraph 4 (d) are explained sufficiently by PW.2- Jerry Msafari who in paragraph 6, 7, 8, 9, 10, ¹¹ and 12- explaining that the cargo was offloaded, and never transported. By time of his arrest, there was nothing being carried by him. Given the evidence above, the evidence of the Plaintiff is sufficient on the balance of probabilities to prove that the Plaintiffs did not load uncustomed goods. No tax was due to paid for goods held in speculation. The issue terminates in the negative.

Issue 2: Whether Defendant unlawfully seized Plaintiffs vehicle.

I have reviewed all evidence on record and the plaint and written statement of defence. Whatever the reasons, the Defendant acted on speculation. The Defendant had no reasonable ground for seizing the empty truck since no hides and skins were found on it. If they had any reason, there is no evidence to that effect. The Plaintiffs evidence has negated the pleadings in the written statement of defence and this issue terminated in the positive.

Issue 3: Whether the arrest of the second Plaintiff was lawful.

This issue arises out of PW.2 (Plaintiff No.2) claiming that he was arrested and detained by Defendants as per paragraph 12 of his statement on oath.

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Counsel prayed that the issue be amended to whether the second Plaintiff was unlawfully arrested and detained by the Defendant.

Under 0.15 r. 5 of the Civil Procedure Rules such an amendment can be granted to enable court determine the actual matter in controversy. These matters are pleaded in paragraph ⁵ of the amended plaint. Ex PD.7 (bail bond form) shows that the 2ⁿ Plaintiff was granted such bond at Nakawa on 15.07.2012.

The pleadings in the written statement of defence, did not address this issue specifically save the general denial under paragraph 8. The Defendant's memorandum of scheduling did not also refer to this aspect.

From evidence on record, Plaintiffs evidence was uncontroverted. The Exh. PD.7 shows that 2nd Plaintiff was indeed arrested and detained. He was given bond after sometime. This issue is proved. It is terminated in the positive.

Remedies:

I note the prayers as under paragraph 9 of the plaint. I also note the evidence by PW.1 Horsborne Ongoli, who states by witness statement, issues regarding the issue of damages. I also take note of submissions raised by the Plaintiffs counsel. I hold that:

- a) The Plaintiff is entitled to recovery of truck as it was at time it was impounded or its current market value stated to be \ \$46,000 USD.
- b) Plaintiff is entitled to recover lost earnings valued at \ \$ 33,600 USD per month from 08.07.2012 till date of release of the truck.
- c) The 2nd Plaintiff is entitled to recover shs. 5,000,000/= (five Millions) as punitive damages for the illegal detention.

I do not find the prayers for general and exemplary damages by 1st Plaintiff necessary given the circumstances of this case and they are not awarded.

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The award of interest is discretionary as per the provisions of Section 26(2) of the Civil Procedure Act.

Wayne Tank and Pump Co. Ltd (1970) 1 QB 447 Harbutts Plasticine Ltd v. stated:

> "zt/? *award of interest is discretionary it seems to me that the basis of an award of interest is that the defendant has kept the Plaintiff out of his money; and the Defendant has had the use of it himself so he ought to compensate the Plaintiff accordingly.*"

However in **Highway Furniture Mart Ltd* v. *The Permanent Secretary [2006] EA 94,** where counsel claimed for interest accrued prior to institution of the suit, it was held that:

> *"Interest antecedent to the suit is only claimable where under an agreement there is stipulation for the rate of interest. (Contractual rate of interest) or where there is no stipulation but interest is allowed by mercantile usage (which must be pleaded) or where there is statutory right to interest or where an agreement to pay interest can be implied from the course of dealing between the parties."*

From the above law, the Plaintiffs are not entitled to any interest. The first Plaintiff has his interest covered by the fact that the award is in dollars which are fairly stable currency and couches him against possible loss by way of inflation.

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Secondly the interest does not accrue in view of the Highway F. Mart (case above).

The \$2^{nd}\$ Plaintiff's award of general damages is also granted without interest.

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The Plaintiffs will be allowed costs of this suit.

The case is found in favour of Plaintiff in terms as above. I so order.

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Prepared on 13 October 2026 · Esheria