THE REPUBLIC OF UGANDA,

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: TIBATEMWA – EKIRIKUBINZA, TUHAISE, CHIBITA, MUSOKE, & MADRAMA, JJSC)

CIVIL APPEAL NO 12 OF 2022

MUNOBE SAMUEL} ..... APPELLANT

VERSUS

THE COMMISSSIONER CUSTOMS, URA} .....RESPONDENT

(Appeal against the decision of the Court of Appeal in Court of Appeal Civil Appeal No. 211 of 2017 dated 14th October 2021 and arising from the decision of the High Court of Uganda at Kampala in HCT – 00 – CV – CS – 066 – 2011 delivered on 31st October, 2006)

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JSC

This is a second appeal arising from the decision of the Court of Appeal on appeal, where they disallowed an appeal against dismissal of the appellant's suit filed in the High Court. The background to the appeal is that in October 2008, the appellant imported six motor vehicles conveyed in a container and the vehicles were involved in an accident en route to Kampala from Mombasa. The vehicles were damaged and were received on 5th November 2008 whereupon the appellant wrote to the respondent requesting for re-verification/re-valuation for purposes of tax and release of the vehicles.

The respondent's officers queried the Inspection of Motor Vehicles Report on 1st July 2009 and other documents provided by the appellant on 20th of July 2009 and on 23rd July 2009. The appellant on several occasions provided all relevant documentation to the respondent to support his declared transaction values which had been rejected by the respondent.

After about a month, an attempt to re-verify and value the imported units was initiated by the respondent's officials. The officers' depreciation method used to value the appellant's damaged vehicles was challenged by the appellant in Civil Suit No 1383 of 2009 in the Chief Magistrates' Court of Nakawa. By a consent decree dated 21st of December 2010, the respondent agreed to consider the extent of damage of the vehicles in assessing the appellant for taxes. In addition, the respondent paid to the appellant general damages of Uganda shillings 10,800,000/=, demurrage of Uganda shillings 6,600,000/= and costs of Uganda shillings 2,000,000/=. The vehicles were subsequently moved to the respondent's warehouse at Nakawa. Upon issuing a release order, the respondent released the vehicles to the appellant.

After release of the vehicles, the appellant contended that the vehicles had been extensively vandalised while in the custody of the respondent and filed a suit in the High Court vide Civil Suit No 066 of 2011. The appellant sought a declaration that the respondent's actions were unlawful, for an order of compensation for loss of business due to the respondent's alleged negligence, general damages and interest thereon as well as for the costs of the suit. The High Court dismissed the appellant's suit and found that the six vehicles were not vandalised by the respondent and therefore the respondent was not liable for the damages. Secondly the respondent was not liable for the vandalism caused to the appellant's six motor vehicles. The suit was dismissed with each party to bear its own costs.

The appellant was dissatisfied with the judgment and appealed to the Court of Appeal on four grounds of appeal namely:

1. That the learned trial Judge of the High Court erred in law when he held that there was no vandalism to the appellant's six motor vehicles.

2. That the learned trial Judge of the High Court erred in law and in fact when he held that the respondent owed the appellant no duty of care since November 2008 to date.

3. That the learned trial Judge erred in law and in fact in holding that the respondent was not liable in damages or any of the remedies sought by the appellant.

4. That the learned trial Judge erred in law and in fact when he failed to properly evaluate and consider the evidence on record as a whole and as such arrived at a wrong decision.

As far as the first ground of appeal is concerned, it was a question of fact as to whether there was any vandalism of the appellant's six motor vehicles but this issue was not material for the conclusion of the Court of Appeal. The learned Justices of the Court of Appeal found that the vehicles of the appellant where stored at Kenfreight (U) Ltd premises two years prior to being with the respondent, and Kenfreight (U) Ltd, a licensed ICD having been licensed by the respondent. The Justices of the Court of Appeal found that the vandalism of the appellants six motor vehicles, if any, from the evidence cannot be attributed to the respondent directly and therefore found no merit in the first ground of appeal.

The second and third grounds of appeal were considered together and the issue was in ground 2 of the appeal was whether the learned trial Judge of the High Court erred in law and fact when he held that the respondent owed the appellant no duty of care since November 2008 to date. The third ground relates to consequential damages depending on the conclusion in ground 2. The learned Justices of the Court of Appeal found that the six vehicles were offloaded and kept at Kenfreight premises till the 29th of September 2010 when they were moved to the respondent's customs warehouse in Nakawa from where the trial court conducted a visit to the *locus in quo*. After considering the law under the East African Community Customs Management Act 2004, that the Commissioner has powers to designate internal container depots by issuing notice in the Gazette and other provisions of the law, the court found that the law empowers the Commissioner to play the role of a supervisor of internal container depots

whereas the owners retain control over the business conducted by the container depots. There was therefore no basis for the appellant's argument that the respondent was in custody and control of the vehicles kept at the Kenfreight customs area. They found that Kenfreight (U) Ltd is a licensed internal container depot in Uganda and to that extent, agreed with the trial Judge that the plaintiff's vehicles could not be said to have been vandalised by the defendant (now the respondent) and the defendant was not liable for any damages occasioned to the vehicles. They also found that the learned trial Judge was right to find that the defendant who is now the respondent owed no duty of care to the plaintiff and the suit failed the test of negligence of the respondent.

Following the outcome of grounds 2 and 3 of the appeal, the Court of Appeal found, for the same reasons, that ground 4 of the appeal had no merit. In the final result, the appeal failed on all grounds and was dismissed with each party to bear its own costs of appeal.

The appellant was also aggrieved by the judgment of the Court of Appeal and lodged an appeal in this court on four grounds of appeal as follows:

1. That the learned Justices of appeal erred in law when they held that the vandalism to the appellants six motor vehicles, if any, on the evidence, cannot be attributed to the respondent directly.

2. That the learned Justices of appeal erred in law when they found no basis for the appellant's argument that the respondent was in custody and control of the vehicles.

3. That the learned Justices of appeal erred in law when they held that the respondent owed the appellant no duty of care.

4. That the learned Justices of appeal erred in law when they failed to properly evaluate and consider the evidence on record as a whole and as such arrived at a wrong decision.

At the hearing of the appeal, learned counsel Mr Martin Banza Kalemera represented the appellant while learned counsel Mr Alex Alideki Ssali and learned Counsel Mr. Derrick Ahumuza, represented the respondent. The court was addressed by way of written submissions which were filed on court record and adopted as the address of the parties to court by both counsel.

In the written submissions, the appellant's counsel argued ground 1 alone, grounds 2 and 3 together and ground 4 alone.

As far as ground 1 of the appeal is concerned, the issue is whether the Court of Appeal erroneously found that the vandalism of the appellant's six vehicles, if any, on the evidence, could not be attributed to the respondent directly. The appellant's counsel submitted that the appellant's six motor-vehicle units were at all times under customs control by the respondent and therefore in the absence of any other evidence to the contrary, the respondent was erroneously exonerated from liability for the vandalism of the appellant's vehicles. The appellant's counsel submitted that the vehicles were under customs control and therefore under the respondents control and the respondent owed the appellant a duty to protect his vehicles from any form of vandalism. He contended that the vehicles were vandalised at the respondent's Nakawa yard and not at a warehouse contrary to the findings of the Court of Appeal.

Counsel contended that the learned trial Judge did not take into account the distinguishable damage attributable to vandalism as opposed to that from the accident (on the way from Mombasa to Kampala) according to the evidence on record. He submitted that there is a need for this court to reappraise the evidence on record and to exercise its powers to cure the evidential error of omission. The appellant's counsel contended that under rule 30 (1) of the Rules of this Court, where the Court of Appeal has reversed, affirmed or varied the decision of the High Court acting in its original jurisdiction, the court may decide matters of law or mixed fact and law but shall not have discretion to take additional evidence. Further that in terms of section 17 of the East African Community Customs Management

Act, where damages are occasioned to any goods subject to customs control through the wilful or negligent act of an officer, then an action shall lie against the Commissioner General or such an officer in respect thereof. The appellant's counsel prayed that this court considers the bill of lading, invoice, customs documents which demonstrate that the appellant's motor-vehicles were imported in good condition as used motor vehicles.

As far as the facts are concerned, the appellant's counsel invited the court to consider the evidence of the appellant in the trial court as well as the documentation which show that the vehicles were damaged on the rooftops and the roofs caved in and the windscreens were damaged and as well as the front bumpers and radiators. That thereafter it was inspected by the officials of the respondent who stated that the vehicles were okay. It is on the basis of that verification that taxes were assessed and paid and the respondent cleared the vehicles for release in January 2011. Contrary to the finding that the vehicles were okay, the clear position is that the vehicles were vandalised and counsel prayed that this court finds that the vandalism can be attributed to the respondent directly.

In reply, the respondent's counsel in the written submissions stated that the respondent opposed the appeal and in agreement with the background facts, added that there was contention regarding the method of assessment of the vehicles between the respondent and the appellant and the appellant objected to the assessment of values of the respondent whereby he challenged the depreciation method used. This resulted in a suit filed by the appellant against the respondent namely Civil Suit No. 1383 of 2009 in the Chief Magistrates Court at Nakawa which resulted in a consent judgment.

After release of the vehicles, the appellant alleged that the vehicles had been vandalised by the respondent while they were in the custody of the respondent hence the filing of HCCS No 66 of 2011 in the High Court where it was alleged that the respondent was negligent and liable for the vandalism on the vehicles.

In reply to ground 1 the learned Justices were right to hold that there was no vandalism of the appellant's motor vehicles by the respondent, if any, and any vandalism could not be attributed to the respondent. The evidence in support of the conclusion of the Court of Appeal was that the container transporting the vehicles was opened from the Kenfreight (U) Ltd premises and was witnessed by the appellant's wife, officers from Kenfreight, the respondent's officials and the clearing agent. The necessary inspection and evaluation was carried out on the same date and it was noted by the parties that damage had been occasioned to the vehicles. The damaged vehicles were stored by Kenfreight from 5th November 2008 until 29th September 2010 when they were transferred to the respondent's warehouse whereupon a locus in *quo visit* was conducted by the trial court.

With reference to the letter of the appellant dated 18th of April 2011, the same should not be misconstrued as the letter was written after damages had been confirmed. It was found that some parts were missing when the vehicle was handed over to the respondent. The respondent cannot therefore be responsible for that damage.

The learned Justices of the Court of Appeal considered the vehicle inspection report of Kenfreight which was done on the same date that the container was opened. This report was more detailed than the police and respondent's reports made on later dates. The inspector of vehicles report dated 31st of December 2008 further proved the extent of the damage and throughout the various reports, the general remarks were that all the vehicles were unfit for use and required comprehensive repairs for registration before use. The respondent's counsel submitted that this was also confirmed by PW 2, the plaintiff's wife.

In addition, when the vehicles were being offloaded from the container, the said witness took photographs of the consignment and it was evident that the vehicles were in a bad condition and extensively damaged. The claim that the respondent's officials vandalised the appellant's vehicles is therefore misconceived and an afterthought and the learned Justices of the

Court of Appeal were justified to hold that such allegations could not be directly attributed to the respondent.

Grounds 2 and 3.

The Appellant's counsel addressed the Court on grounds 2 and 3 of the appeal together and ground 4 separately. Counsel submitted with reference to the findings of the Court of Appeal that the vehicles were stored with Kenfreight (U) Ltd, being one of the container depots. The appellant's counsel contended that the respondent was in custody and control of the vehicles because Kenfreight is a customs area. That in the premises, the respondent had a duty of care in the circumstances. Counsel relied on the dictum of Lord Atkin in **Donoghue vs Stevenson (1932) AC 562** that a general duty of care could be said to exist between two parties and that the 'neighbour principle', described in the key quote: "you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour...". Basing on the neighbour principle, the appellants counsel relied on section 16 (1) of the East African Community Customs Management Act for the proposition that it provides that certain goods are subject to customs control. Further that the Commissioner is liable for the wilful or negligent act of an officer for damage to goods subject to customs control in terms of section 17 of the said Act. The appellant's counsel submitted that the provisions of the law read together with the evidence on record imposed a duty of care on the respondents as far as the goods under customs control are concerned. He contended that the respondent and his agents were responsible under the law for imported goods under customs control. Evidence adduced at the visit of the trial Judge to the *locus in quo* demonstrates that spare tyres were missing and some cars had missing lights and tyres, inside bits of the cars had missing spares. Notwithstanding the above, the respondent's agents in various verification forms found that the appellant's vehicles were okay and therefore there is ample evidence to show that the appellant's vehicles were vandalised while in the respondent's custody and the respondent's agents as customs officers chose not to disclose it. In the premises, the

appellant prays that this court finds that the learned Justices of appeal erred in law when they found that the respondent was not in custody and was not in control of the vehicles and therefore did not owe the appellant a duty of care.

Ground 4.

That the learned Justices of appeal erred in law when they failed to properly evaluate and consider the evidence on record as a whole and as such arrived at a wrong decision.

The appellant's counsel reiterated earlier submissions on the other grounds of appeal and submitted that under section 101 of the Evidence Act, whoever alleges something has the burden to prove it and the standard of proof is on the balance of probabilities. In the premises, the appellant's counsel submitted that the learned Justices of appeal failed in their duty to adequately assess and consider the entirety of the evidence presented regarding the vandalism of the appellant's vehicle by the respondent's officials. Counsel contended that the plaintiff and his wife Ritah Munobe revealed the details of the vandalism of the vehicles. During the transportation of the motor vehicles in question, they had been partially disassembled. The vehicles were received in November 2008, and the notes of the trial Judge reveals alarming discrepancies in the condition of the vehicle when he visited the *locus in quo* in that there were missing spare tyres, lights and tyres, inside the vehicles, various parts were also reported missing. The findings bolster the appellant's claim of vandalism and underscore the need for a meticulous re-evaluation of evidence. In conclusion, the appellant's counsel submitted that there is compelling evidence from witness statements and visit to the *locus in quo* which collectively necessitates a thorough review of the evidence and the question of who was responsible for the vandalism of the appellant's vehicles. The appellants counsel relied on rule 30 of the Judicature (Supreme Court Rules) Directions for the proposition that where the Court of Appeal has reversed, affirmed or varied the decision of the High Court in the exercise of its original jurisdiction, the Supreme Court may decide

matters of law or mixed law and fact and may not take additional evidence. In the premises he contended that this court finds that the Court of Appeal did not properly direct itself on the law and evidence on record and came to a wrong decision. He prayed that the appeal is allowed the Judgments of the Court of Appeal and the High Court be set aside that the costs in this court and the courts below be awarded to the appellant.

In reply, the respondents counsel addressed the Court on grounds 2, 3, and 4 together.

With reference to grounds 2, 3, and 4, the respondent's counsel submitted that the submissions of the appellant in relation to section 16 and 17 of the EACCMA that the vehicles were under customs control of the respondent who therefore had a duty of care in respect thereof were misconceived.

The respondent's counsel submitted that it is a fact that, by the time the vehicle arrived in Uganda in 2008, they were already damaged and parked at Kenfreight premises. The inspection by Kenfreight was done on the same day and witnessed as stated above. By the time the vehicles were moved to the respondent's customs warehouse in Nakawa in 2010, it was established that damage could only have increased. Therefore, no duty of care could be imputed on the respondent for vehicles it received in such a bad state. The respondent's counsel contends that the learned Justices of the Court of Appeal were alive to this fact and agreed with the Judge that the respondent was not in custody and control of the vehicles since they were already damaged while at the premises of Kenfreight which was a licensed Internal Container Depot. In the premises, apart from the fact that the respondent's officials were not responsible for the damage, the respondent owed no duty of care to the appellant and there was no negligence of the respondent which had been proved. Further, no ingredients of negligence were disclosed in the submissions of the appellant. Counsel submitted that because the respondent owed no duty of care, negligence could not be proved in terms of the decision in **Souza Manyindo vs Attorney General; Civil Appeal No. 70 of 2003**. Further, the respondent's counsel relied on **Stovin Vs Wise (1996) 3 All ER 801** per Lord Hoffman for the proposition that "*in*

determining whether a public authority was under liability for a negligent commission to exercise its statutory power, the court had to decide, in light of the policy of the statute conferring the power, whether the authority was not only under a duty in public law to consider the exercise of the power but also under a private law duty to act, which give rise to a claim in compensation against public funds for any failure to do so. So if the policy of the Act is not to create a statutory liability to pay compensation, the same policy should ordinarily exclude the existence of a common law duty of care."

The respondent's counsel submitted that the appellant's argument that the respondent owed him a duty of care since November 2008 when the vehicles arrived in Uganda is erroneous and misconceived. The vehicles were only received and kept at the respondent's customs warehouse on 29th September 2010 in a damaged and vandalised state. The appellant cannot state that the vehicles were in a perfect state when brought into the respondent's custody as this would be untrue.

In addition, the respondent's counsel submitted that the reliance by the appellant on evidence collected from the *locus in quo* visit cannot stand in that the trial Judge merely took note of the proceedings and claims by both parties and did not make it his own findings nor did he rely on it for decision. The visit was done in 2013, six years after the vehicles were first ascertained as damaged in the initial reports.

In the premises, the respondent's counsel prayed that we find that the Court of Appeal carried out its duty to re-evaluate the evidence and the second, third, and forth grounds of appeal lack merit and should be answered in the negative. He prayed that we find no merit in the appellant's appeal and that we dismiss it and uphold the findings of the trial court and the Court of Appeal.

Consideration of the Appeal

I have carefully considered the submissions of the appellant's counsel as well as that of the respondent's counsel. I have considered the facts

disclosed in the record of appeal and the exhibits admitted in evidence. Finally, I have considered the law as presented by the parties and generally.

Firstly, it should be noted that this is a second appeal against the Court of Appeal decision upholding the decision of the trial Judge where the trial Judge dismissed the appellant's suit. I have also considered the grounds of appeal.

Ground 1: That the learned trial Judge of the High Court erred in law when he held that there was no vandalism to the appellant's six motor vehicles.

The first ground of appeal primarily deals with questions of fact as to whether the respondent through its officials was responsible for the vandalism on the appellant's vehicles in that several parts of the vehicles were found missing. Corollary to the question of fact are other secondary questions which include which of the appellant's imported vehicles were damaged due to an accident on the way to Uganda from Mombasa? Were vehicle parts removed or were the vehicles vandalised by removing the parts from the vehicles after they were received by the respondent? Which were the missing parts at the time of inspection of the imported six motor vehicles when the container was opened for the first time at Kenfreight (U) Ltd (a licensed Internal Container Depot) and where were the vehicles kept from November 2008 up to 29th September 2010. As a question of fact where were the missing parts (if any) removed from? Were they removed while in the custody of Kenfreight (U) Ltd or while in the custody of the respondent at its warehouse?

Further as a matter of law; is the respondent liable for the security of imported goods under customs control even if kept at a privately owned internal container depot (ICD) or warehouse licensed to operate as such by the respondent? What is the import of sections 16 and 17 of the East African Community Customs Management Act in terms of liability of the Commissioner General for negligence?

For the questions of fact, this court's jurisdiction is limited to establishing whether the Court of Appeal in dealing with the issue subjected the evidence on record to a fresh and exhaustive scrutiny.

In **Francis Sembuya vs Allports Services (U) Ltd; Supreme Court Civil Appeal No 06 of 2001** Tsekooko, JSC held that to disturb any concurrent findings of fact of the High Court and Court of Appeal ought to be on a sound basis:

> Naturally and normally any concurring findings of facts by the High Court as a Court of trial and the Court of Appeal, as a first appellate Court, will be accorded due respect by this Court. I would observe generally that where it is necessary to disturb such findings, disturbing such findings would obviously be based on a sound basis. In saying this, I must not be understood to be laying down any hard and fast rule on the matter.

In **Uganda Breweries Limited Vs Uganda Railways Corporation; Supreme Court Civil Appeal No 6 of 2001**, Oder JSC held that where the Court of Appeal lived up to its task of reappraisal of evidence and arriving at its own conclusion, there would be no basis to interfere with the findings of the Court. Oder, JSC said that:

> In the instant case, I have no doubt that the Court of Appeal, as the first appellate court lived up to its task as set out in rule 29(1) of the Court of Appeal Rules and as explained in cases such as - *Selle and Another vs Associated Motor Board Co. Ltd.* (supra). *Pandya vs Republic* (supra); *Charles B. L. Bitwire vs Uganda* (supra) and *Kifamunte Henry vs Uganda* (supra); *Cognlan vs Cumberland (1898) I.Ch.704. (CA); Watt Thomas vs Thomas (1947) AC. 484 (H.L.); Abdul Hamid Saif vs Alimohamed Slidem (1955) 22, EACA 270; Trevor Price & Anor vs Raymond Kelsall (1957) EA 752 and Peters vs Sunday Post Ltd. (1958) EA 424.* There would therefore be no basis for this Court to interfere with the Court of Appeal's finding of fact and law that the appellant's semi - trailer was solely to blame for the accident in question.

Generally, where the Court of Appeal has re-evaluated the evidence on record or where it has exercised its duty under rule 30 (1) (a) of the Judicature (Court of Appeal Rules) Directions, this court would not to interfere with its concurrent findings of fact except in very exceptional

circumstances. Such exceptional circumstances were set out in by the Supreme Court in **Kifamunte Henry vs Uganda; Supreme Court Criminal Appeal No. 10 of 1997**:

> Once it has been established that there was some competent evidence to support a finding of fact, it is not open, on second appeal to go into the sufficiency of that evidence or the reasonableness of the finding. Even if a Court of first instance has wrongly directed itself on a point and the court of first appellate Court has wrongly held that the trial Court correctly directed itself, yet, if the Court of first appeal has correctly directed itself on the point, the second appellate Court cannot take a different view R. Mohamed All Hasham vs. R (1941) 8 E.A.C.A. 93.
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> On second appeal the Court of Appeal is precluded from questioning the findings of fact of the trial Court, provided that there was evidence to support those findings, though it may think it possible, or even probably, that it would not have itself come to the same conclusion; it can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law: R. vs. Hassan bin Said (1942) 9 E.A.C.A. 62.

The duties of a first appellate court required to be exercised on a first appeal were considered by the Court of Appeal of East Africa in **Peters vs Sunday Post Ltd {1958} 1 EA 424** where the Court cited with approval the principles set out by the House of Lords in **Watt Vs Thomas [1947] 1 ALL E.R. 582**. These principles include the following:

1. The decision of the trial Judge who has seen or heard the evidence should not be set aside except on exceptional grounds and this jurisdiction should be sparingly exercised for instance where:
    a. There is no evidence in support of a particular conclusion.
    b. The conclusion of the trial Judge in view of the evidence on record was not satisfactory.
    c. The reasons given by the trial Judge after review of the evidence are not satisfactory.
2. Where there is conflicting testimony on a particular fact or particular facts the observations of the trial Judge should be considered bearing in mind that the first appellate court did not have the opportunity to see and hear the witnesses and should caution itself about this fact.

3. The judgment of the trial court on the facts may be demonstrated on the printed evidence to be affected by a material inconsistencies and inaccuracies, or he made be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong.

After considering the duty of a first appellate court and the record of appeal, I have found that the pivotal questions of fact that gave rise to ground 1 of the appeal in this Court were exhaustively reappraised by the Court of Appeal and that there are credible facts to support the concurrent conclusions of the trial court and Court of Appeal. My conclusion on ground 1 is based on the reasons I set out below.

Starting with the averments in the plaint, the specific case of the appellant which he sought to prove in the trial court is clearly disclosed. Paragraph 3 of the plaint avers as follows:

> "The plaintiffs claim against the defendant is for a declaration that the defendant's acts were unlawful, an order for compensation for loss of business, loss of profits, plus general damages and interest thereon, and costs of the suit".

The facts averred include the fact that the plaintiff imported six vehicles for business of special hire taxis. The appellant, who was the plaintiff, averred that he had obtained a loan for this purpose. The vehicles arrived in the country on 12th November 2008 and the plaintiff applied for re-verification and revaluation as well as release of the vehicles to him. Regarding the allegation of negligence, particulars of negligence were given and included failure to protect the plaintiff's vehicles in customs control leading to vandalism, loss of some vehicle parts. Failure to take all necessary measures to avoid theft of parts of vehicles. Subsequently in paragraph 11, the plaintiff prayed for the following ~~the~~ remedies:

- A declaration that the defendant's continued non-clearance of the plaintiff's vehicles is unlawful.

- An order that the defendant pay Uganda shillings 15,000,000/= being compensation for the fair market value for each of the plaintiff's six units of motor vehicles.
- An order that the defendant pays to the plaintiff general damages for loss of business and loss of profits.
- An order that the defendant pays to the plaintiff special and punitive damages for the damage caused the plaintiff due to the defendant's negligent actions.

The plaintiff did not however plead any special damages for loss of motor vehicle parts. In addition, it is clear that the question of law was whether the defendant's continual refusal to fully clear the plaintiff's motor vehicles was unlawful. Secondly, the plaintiff prayed for the full market value of each of the six units of the motor vehicles at the sum of Uganda shillings 15,000,000/=. Further, the plaintiff prayed for general damages for loss of business which has nothing to do with the value of the vehicle parts which were lost but instead has everything to do with the delay in clearance of the vehicles. Last but not least, the claim for special damage caused to the plaintiff due to the defendant's negligent actions does not specifically cater for the list of damaged or missing spare parts. The particulars of special damages were pleaded.

The learned trial Judge clearly set out the facts and the evidence which is consistent with the recorded facts and the documentation on record. The critical facts relating to the missing parts included the fact that the plaintiff filed Civil Suit No 1383 of 2001 in Nakawa court challenging the valuation of six imported motor vehicles by the respondent's officials who had used a depreciation method. The suit resulted in a consent judgment where the respondent paid Uganda shillings 10,800,000/= as general damages. Secondly the plaintiff who is the appellant was awarded Uganda shillings 6,600,000 as demurrage. In the suit in the Chief Magistrate's Court of Nakawa, the plaintiff had sought, *inter alia*, for the remedy of general damages and relied on the reports from Kenfreight (U) Ltd dated 5 November 2002 being vehicle inspection reports. The appellant also relied

on the Inspector of Vehicles report dated 31st December 2008. Photographs taken by PW2, the wife of the appellant, were all intended to show the extent of the damage to the vehicles. The purpose of showing the damage was to show that the depreciation method for valuation of the vehicles was unjust. Thereafter, the plaintiff was requested to pay the revised tax rate because of the state of the motor vehicles that were proved in evidence. There was a letter of the respondent dated 25th of January 2011 for release of the vehicle. As far as the appellant is concerned, he wrote a letter dated 14th of February 2011 seeking for release of the vehicles. I note that the release of the vehicles on the basis of the respondent's letter of 25th of January 2011 concerned four motor vehicles out of six. Consent Judgment was signed by the parties on 10th December 2010 before this. Particularly, the learned trial Judge considered the question of where the vehicles were damaged from and came up with the following findings of fact.

The vehicles were received in the respondent's warehouse on 29th September 2010. The vehicles were delivered to the respondent when they were in a deplorable state. The inspection report of Kenfreight was set out in great detail giving particulars of missing parts according to the report for each motor vehicle. This were admitted in evidence as exhibits DD1, DD2, DD3, DD4, DD5 and DD6 whose contents were reproduced by the learned trial Judge showing the extensive missing parts he set out in the Judgment. The trial Judge also relied on the report of the Inspector of Vehicles and the testimony of PW2, the wife of the appellant, showing that the vehicles were extensively damaged. He concluded that the damage to the vehicles occurred before 29th of September 2010 when the vehicles were handed over to the respondent. He found that, for the said damage, the respondent did not owe any duty of care to the appellant. As a finding of fact, the learned trial Judge held that the vehicles could not have been vandalised by the respondent's officials and the respondent was not liable for any damages occasioned. The rest of the issues followed these findings and were resolved accordingly.

On appeal to the Court of Appeal, the first three grounds of appeal are intertwined and dealt with the question of fact leading to the conclusion that the vehicles could not have been vandalised by the respondent's officials. It also disclosed a point of law relating to customs control and liability of the Commissioner. I found it necessary to set out the first three grounds of appeal in the Court of Appeal for purposes of demonstrating that they are based on the finding on the question of fact as to whether the parts from the plaintiff's vehicles went missing at the respondent's premises. The question was whether it happened before or after 29th September 2010. The first ground was that **the learned trial Judge of the High Court erred in law when he held that there was no vandalism to the appellant's six motor vehicles.** The second ground is that **the learned trial Judge of the High Court erred in law and in fact when he held that the respondent owed the appellant no duty of care since November 2008 to date.** The third ground was that **the learned trial Judge erred in law and in fact in holding that the respondent was not liable in damages or any of the remedies sought by the appellant.**

Any conclusion on the three grounds of appeal can only be based on the finding of fact as to when the vehicle parts went missing. Was it before 29th of September 2010 or after the vehicles were handed over to the respondent? From the time the vehicles arrived, they had been kept with Messieurs Kenfreight (U) limited in their warehouse or Internal Container Depot (also referred to as ICD). When I have considered ground 1 in the Court of Appeal, my conclusion is that the ground was erroneously phrased because the trial Judge did not expressly find that the vehicles were not vandalised. In relation to ground 2, it is a conclusion based on whether the respondent owed a duty of care when the vehicle was with Kenfreight (U) Ltd and when some of the parts were even missing by the time Kenfreight made a report on the missing parts. Ground 3 in the first appellate court dealt with consequential relief based on the findings of fact.

The learned Justices of the Court of Appeal in ground one found that the vandalism on the appellant's vehicles, if any, cannot be attributed to the

respondent directly thereby agreeing with the trial Judge. It came to this conclusion after extensively reviewing the evidence. This concurrent finding of fact and the conclusion is supported by credible evidence. After reading the record for the evidence, it is clear that there was no misdirection on the part of the trial Judge as to the evidence and there is no need to reproduce the evidence which had been accurately summarised by the trial Judge. I further note that on the 18th of April 2011, the appellant wrote to the Commissioner General Uganda Revenue Authority on the subject of **Negligent Conduct of Customs**. He wrote that he had been given a release order and established that the following parts were missing:

1. The car Keys.
2. The tyres.
3. Side mirrors, indicator lights and others.
4. Batteries.
5. Car radios.
6. Electronic parts.
7. Essential engine parts.

As I noted above, the appellant never pleaded these alleged missing parts for purposes of proving his claim for special damages so there are no particulars of those missing parts in the plaint. Secondly, there was a consent decree dated 10 December 2010 and it was established that before the Chief Magistrate's Court of Nakawa, the appellant had used the list of missing parts generated by Kenfreight (U) Ltd to challenge the method of assessment of tax by the respondent's officials and in an effort to prove that the vehicle had been extensively damaged and therefore he should pay less tax for the imported vehicles. This came out in cross examination of PW1 (the appellant) and PW2, (his wife). The learned trial Judge relied on this evidence. What is important is that the list contains radios which are missing, lights, sports lights, front lights, parking light, red lights, and very many other items which are also listed in the letter of the appellant to the respondent dated 18th of April 2011.

In addition, I have considered the testimony of the appellant as PW1 and that of his wife Mrs Rita Munobe. The learned Justices of Appeal also considered this list of missing parts and found that they were more exhaustive than that of the Inspector of Motor Vehicles. The learned trial Judge made a thorough list of all the six exhibits extracted from the reports generated by Kenfreight (U) limited. The report listed 169 missing parts. In fact, these parts were listed as missing during the time the container bringing the imports was first opened at the premises of Kenfreight (U) Ltd. There is no evidence whatsoever on the record showing that the vehicles were vandalised after they were moved to the respondent's warehouse.

In the premises, the conclusions of the trial Judge and that of the learned Justices of the Court of Appeal are based on credible evidence and there is no basis for any departure by this court. Ground 1 of the appeal in this court has no merit and is hereby disallowed.

I have carefully considered ground 2 of the appellant's appeal which is to the effect that the learned Justices of Appeal erred in law when they found that there was no basis for the appellant's argument that the respondent was in custody and control of the vehicles. Secondly I have also considered ground 3 of the appeal in this court which is to the effect that the learned Justices of Appeal erred in law when they held that the respondent owed the appellant no duty of care. It is my finding that grounds 2 and 3 are inextricably intertwined in that they can be taken to give rise to the question of law arising from interpretation of sections 16 and 17 of the East African Customs Management Act 2004. This relates to the issue of negligence of officers of the respondent in that context. Section 16 of the EACCMA provides for the category of goods which are subject to customs control. It provides that:

> 16.-(1) The following goods shall be subject to Customs control-
>
> (a) imported goods, including goods imported through the Post Office, from the time of importation until delivery for home consumption or until exportation, whichever first happens;

(b) ...

(i) seized goods.

In the appellant's circumstances the relevant section is section 16 (1) (a) under the tag "imported goods". The appellant's goods were imported goods and therefore designated as goods subject to customs control and there is no controversy about this fact. Further, section 16 (2) of the EACCMA confers on the respondent's officers the right to examine such goods and also forbids anyone from interfering with such goods except with the authority of the Commissioner. It provides that:

> (2) Where any goods are subject to Customs control, then-
>
> (a) any officer may at any time examine such goods;
>
> (b) except with the authority of the Commissioner or in accordance with this Act, no person shall interfere in any way with such goods.

Any person who interferes with goods without authority of the Commissioner commits an offence as per section 16 (4) of the EACCMA, 2004 which provides that:

> (4) A person who contravenes subsection (2)(b) commits an offence and shall be liable on conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three years, or both and any goods in respect of which such offence has been committed shall be liable to forfeiture.

The clear meaning and import of section 16 of the EACCMA is that imported goods can only be released upon obtaining the written authority of the Commissioner. Obviously this means that it facilitates the mechanisms for payment of import duty. It is not in dispute that the goods were stored by Kenfreight (U) Ltd and thereafter on 29th September 2010, transferred to the respondent's warehouse. The question of fact established by both lower courts is that the vehicles had extensive damage with very many missing parts before they were transferred to the respondent's custody. Prior to that they were in the custody of Kenfreight (U) Ltd, a licensed Container Depot or warehouse.

Nobody other than a warehouse keeper or an ICD owner/keeper can have access to it except with authority of the responsible officer. The proper officer has access to a ware house under section 59. The provisions of sections 12 and 14 with regard to ICDs or sections 47 – 69 of the EACCMA are clear. Goods entered for storage subject to customs control can be accessed and examined but cannot be taken away. The security and care of the goods are in the hands of the warehouse keeper or ICD owner/keeper who is licensed to keep them and who should not allow access to the goods without authority of the proper officer. It follows that any loss or damage to the goods cannot be based on presumptions of law relating to a concept of goods subject to customs control but the fact of loss due to neglect of the respondent's officers has to be proved. This is the import of section 17 of the EACCMA which provides that:

> 17. Where any loss or damage is occasioned to any goods subject to Customs control through the wilful or negligent act of a Commissioner or an officer, an action shall lie against the Commissioner or such officer in respect thereof.

The section explicitly provides that it is the loss or damage occasioned by the wilful or negligent act of a Commissioner or an officer which leads to liability of the Commissioner General. In my judgment, the wilful act or omission or the negligent act or omission has to be pleaded and proved to the satisfaction of court. There is no presumption of law that placing goods under customs control makes the Commissioner the person in charge of their care and security. In fact, warehouse or ICD keepers are licensed to keep the goods safe and not to release them without the requisite authority of the responsible officer of the respondent. Goods which are subject to import duty may be stored in a government warehouse or bonded warehouse under section 47 (1) of the EACCMA or section 14 (1) of the EACCMA with regard to ICDs. Where they are stored in a bonded warehouse the warehouse keeper is required to keep then under seal or lock and key. The Commissioner may, on application under section 62 (1) or 14 (1) of the EACCMA, license any place or house as a warehouse or ICD respectively for the deposit of goods liable to import duty and such a place or house is under the physical control of a licensed warehouse keeper. A warehouse keeper

commits an offence if he or she allows the place or house to be used in contravention of the license (See section 62 (8) of the EACCMA or section 14 (5) in respect of ICDs). Under section 16 (2) or section 67 (1) an ICD or warehouse keeper respectively is required to produce any goods at the request of a responsible officer. Under section 67 (3) a warehouse keeper who takes, substitutes, causes or permits any goods in a bonded warehouse to be or substituted commits an offence and is liable to pay a fine of twenty-five percent of the dutiable value of the goods substituted or taken.

This proves that the goods are under the care of the warehouse keeper or ICD owner/keeper licensed to take care of imported goods under customs control.

In my judgment therefore, the warehouse keeper or ICD owner is liable to the owner or importer of the goods if the goods get lost or damaged under his or her care. It follows that the findings of the Court of Appeal and the trial Court that the goods were damaged through having many parts vandalised before they were brought into the custody of the respondent leads to the conclusion that the officials of the respondent were neither negligent nor did they do any wilful act leading to loss or damage to the appellant's goods. The conclusion is inevitable that the loss cannot, as a matter of fact, or law, be attributed to the respondent's officials and the respondent is not liable for any loss. In the premises, grounds 2 and 3 of the appeal have no merit and I would make an order that they are disallowed.

With regard to ground 4, which is on the question of whether the learned Justices of the Court of Appeal failed to properly evaluate and consider the evidence on record as a whole and as such arrived at a wrong decision, my judgment on grounds 1, 2 and 3 is that the lower courts considered and thoroughly evaluated the credible evidence on record respectively before reaching their conclusions. In the premises, I would also disallow ground 4 of the appeal.

Overall, I find that the appellant's appeal lacks merit and I would make an order that it be dismissed with costs.

Dated at Kampala the 10th day of November 2023

Christopher Madrama Izama

Justice of the Supreme Court

Martin Mbanga Kalemera for the Appellant
Nkonjo Alan for the Respondent
Appellant in court.
no person from URA.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: TIBATEMWA-EKIRIKUBINZA; TUHAISE; CHIBITA; MUSOKE; MADRAMA; JJ.SC.]

CIVIL APPEAL No.12 OF 2022

BETWEEN

MUNOBE SAMUEL :: APPELLANT

AND

THE COMMISSIONER CUSTOMS, URA:::::::::::::::: RESPONDENT

[Appeal arising from the judgment of the Court of Appeal at Kampala dated 14th October 2021 before (Kiryabwire, Mugenyi,JJA and Kasule, Ag.JA) in Civil Appeal No. 211 of 2017.]

JUDGMENT OF PROF. TIBATEMWA-EKIRIKUBINZA, JSC.

I have had the benefit of reading the judgment of my learned brother, Hon. Justice Christopher Madrama, JSC. I agree with his analysis and conclusion that the appeal fails.

Since Hon. Justices: Tuhaise, Chibita and Musoke, JJSC also agree, orders are issued in the terms proposed by Hon. Justice Christopher Madrama, JSC.

Dated at Kampala this 17th day of November 2023.

Tibatemwa.

.....

HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: TIBATEMWA-EKIRIKUBINZA; TUHAISE; CHIBITA; MUSOKE; MADRAMA; JJSC)

CIVIL APPEAL NO. 12 OF 2022

MUNOBE SAMUEL .....APPELLANT

VERSUS

THE COMMISSIONER CUSTOMS, UGANDA REVENUE AUTHORITY .....RESPONDENT

[Appeal from the decision of the Court of Appeal at Kampala before Kiryabwire, Mugenyi, JJA and Kasule, Ag. JA, in Civil Appeal No. 211 of 2017 delivered on 14th October, 2021]

JUDGMENT OF TUHAISE, JSC.

I have had the benefit of reading in draft the Judgment of Hon. Justice Madrama, JSC.

I agree with the decision, and the orders therein.

Date at Kampala, this 10th day of November 2023.

Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: TIBATEMWA-EKIRIKUBINZA; TUHAISE; CHIBITA; MUSOKE; MADRAMA; JJ.SC)

CIVIL APPEAL NO: 12 OF 2022

MUNOBE SAMUEL ::: APPELLANT

VERSUS

THE COMMISSIONER CUSTOMS, URA ::::::::::::::: RESPONDENT

[Appeal against the decision of the Court of Appeal in Court of Appeal Civil Appeal No. 211 of 2017 dated 14th October, 2021 and arising from the decision of the High Court of Uganda at Kampala in HCT-00-CV-CS-066-2011 delivered on 31st October, 2006]

JUDGMENT OF CHIBITA, JSC

I have had the benefit of reading in draft the judgment prepared by my learned brother, Hon. Justice Madrama, JSC and I agree with his reasoning and his conclusion.

I also agree with the orders that he has proposed.

Dated at Kampala this ....day of 2023

Hon. Justice Mike Chibita

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 12 OF 2022

MUNOBE SAMUEL::APPELLANT

VERSUS

THE COMMISSIONER CUSTOMS,
UGANDA REVENUE AUTHORITY::::::::::::::::::::::::RESPONDENT

(Appeal from the decision of the Court of Appeal (Kiryabwire and Mugenyi, JJA and Kasule, Ag. JA in Civil Appeal No. 211 of 2017 dated 14th October, 2021)

CORAM: HON. LADY JUSTICE PROF. LILLIAN TIBATEMWA – EKIRIKUBINZA, JSC
HON. LADY JUSTICE PERCY TUHAISE, JSC
HON. MR. JUSTICE MIKE CHIBITA, JSC
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC
HON. LADY JUSTICE CHRISTOPHER MADRAMA IZAMA, JSC

JUDGMENT OF ELIZABETH MUSOKE, JSC

I have had the advantage of reading the judgment of my learned brother Madrama, JSC. For the reasons he has given therein I agree with him that this appeal should be dismissed with costs to the respondent.

Dated at Kampala this ....10th..... day of...November.....2023.

.....

Elizabeth Musoke

Justice of the Supreme Court