THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

HIGH COURT CIVIL SUIT NO.0753 OF 2005

PATRICK KIMBALEEBA :::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

UGANDA REVENUE AUTHORITY :::::::::::::::::::::::::::::: RESPONDENT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

JUDGMENT

The plaintiff Patrick Kimbaleeba brought this suit against the defendant Uganda Revenue Authority a statutory corporation, seeking the payment of the sum of (Ug) Shs. 32,016,500/=(Uganda shillings thirty two million sixteen thousand five hundred shillings) being special damages as a result of the conversion of the plaintiff's vehicle, interest on the amount, general damages and costs of the suit.

The brief facts of this case are that, sometime around 5th April 2003 the plaintiff purchased and shipped for importation into Uganda a motor vehicle Toyota Prado chassis no.KZJ780039423 from Dubai to Mombasa. On its way to Kampala the said motor vehicle which was being driven was involved in an accident and the chassis was destroyed. In June 2004, the plaintiff then obtained a new chassis no.LJ78-0030221 for the said vehicle to replace the damaged chassis no.KZJ8-0039423. Upon repairing the vehicle in Kenya, the plaintiff states that, an import/export/transit/warehousing declaration dated 15th July 2004 was made in order to have the vehicle imported into Uganda. The vehicle was now described as Toyota Prado chassis no.LJ78-0030221. It is the plaintiff's case that the vehicle arrived in Uganda at Malaba on 12th June 2004 and was received in Kampala at the Transahara International (U) Ltd Inland Container Depot

(hereafter referred to as ICD) on 12th October 2004 and was verified by the defendants on 13th October 2004. The plaintiff further claimed that the defendants had problems with Transahara International (U) Ltd where the Toyota Prado was kept which culminated in the closure of the bond sometime in December 2004. The defendants then advertised the vehicle for sale by public auction on 13th January 2005 as lot no. 10894 under the names "MBALEEBA HARRY" and chassis number LJ787-0030221. It is the case for the plaintiff that neither the name nor the chassis on the advert referred to him or his vehicle and that the Toyota Prado chassis no.LJ780030221 was on the contrary transferred to HAKS ICD around the 27th of January 2005 without notification to the plaintiff in writing.

On 10th February 2005, the plaintiff lodged the customs declaration form and taxes were assessed at Ug.Shs.4,901,697/= (Uganda shillings four million nine hundred one thousand six hundred ninety seven). On the 17th of February 2005, the plaintiff paid the assessed taxes of Ug.Shs.4,901,697/=. The plaintiff claims that on 15th March 2005, the defendant further raised a query by issuing a query notification/ amendment form dated 15th March 2005. The query was communicated to the plaintiff who answered all the questions being raised by the defendant by, letters from M/S Bemuga his clearing agents, to the defendant dated 15th April 2005 and 29th July 2005. The plaintiff claims that the query was resolved on 3rd August 2005 and the customs value of US $ 4605 was upheld by the defendant and the determination was written on the customs entry No. C5361 dated 10th February 2005. Having learnt of this determination the plaintiff went ahead to attempt to secure the release of the vehicle which was still supposed to be in the custody of the defendant. However, the plaintiff's agents did not find the vehicle and the plaintiff was formally advised that the vehicle had been sold for Ug. Shs.3, 298,925/= (Uganda shillings three million two hundred ninety eight thousand nine hundred and twenty five shillings) based on an advertisement in the New Vision of 13th January 2005. As a result, the plaintiff claims to have suffered loss in the sum of Ug. Shs.32, 016,500/= (Uganda shillings thirty two million sixteen thousand five hundred shillings)

The defendant on the other hand denies any knowledge and fact of the accident that occurred to the Toyota Prado Chassis No. KZJ780039423 or the change of the chassis on the motor vehicle in issue and avers that the motor vehicle having over stayed in the ICD was therefore put on the

auction list that was published in the New Vision Newspaper of 13th January2005. The defendant further pleads that the vehicle was disposed of when the importer failed to redeem it. That the taxes that were paid by the plaintiff were collected in error and that the plaintiff was advised to collect a refund of the said taxes but that the plaintiff had refused to do so.

The issues for trial were as follows –

1. Whether or not the defendant legally disposed of the plaintiff's vehicle.
2. What remedies are available

Mr. Kiryowa Kiwanuka appeared for the plaintiff while Mr. Peter Mulisa appeared for the defendant.

Issue no. 1: whether or not the defendant legally disposed of the plaintiff's vehicle.

Counsel for the plaintiff submitted that the disposal of the plaintiff's vehicle chassis number LJ78-0030221 was illegal, unlawful and wrongful. Counsel further submitted that at the time the vehicle that is Toyota Prado chassis number LJ 78-0030221 ,came into Uganda the defendant relied on **The Customs Management Act, The East African Customs And Transfer Management Act (as adopted by Decree 13 of 1977)** with subsequent amendments as the applicable law **Section 28** of that Act provides that;

"Save as otherwise provided in the customs laws, the whole of the cargo of an aircraft, vehicle or vessel which is unloaded or to be unloaded shall be entered by the owner within twenty one (21) days after the commencement of discharge or incase of vehicles on arrival or such further period as may be allowed by the proper officer, either for-

a) *Home consumption;*
b) *Ware housing;*
c) *Transhipment;*
d) *Export or Ex-warehouse*
e) *Removal to another warehouse*
f) *Use as stores for aircraft or vessel or*
g) *Re-warehousing."*

Counsel submitted that in the instant case the plaintiff's vehicle arrived at the Transahara ICD on 12th October 2004 and as such it was supposed to be entered by the plaintiff for one of the purposes mentioned in **Section 28 of the Act** no later than 2nd November 2004 which was not done due to the wrangles that had arisen between the defendant and the Transahara ICD as testified by Mr. Patrick Kimbaleeba (Pw1) and which counsel for the plaintiff submits and was corroborated by Mr. Constantine Opiro (DW1).

Counsel for the plaintiff further submitted that the application by the defendant of the **Customs Management Act, The East African Customs and Transfer Management Act** with subsequent amendments to auction of the plaintiffs vehicle was wrong as on January 1st 2005 as a new legal regime under **the East African under the East African Community Customs Management Act, 2004 Act (no.1 0f 2005)** took precedence over the old law by virtue of **section 253 of the East African Community Customs Management Act, 2004** that provides that,

"This act shall take precedence over the partner's state laws with respect to any matter to which its provisions relate."

It is the plaintiffs submission as well, that after 11th December 2004 under the **Customs Management Act, The East African Customs and Transfer Management Act** with subsequent amendments, which was the applicable law at the time, allowed the commissioner under **section 36(1)** thereof to sale the vehicle by public auction after one month's notice of such sale had been given by the proper officer by publication in such manner as the Commissioner General may see fit if the goods had not been removed after two months.

Counsel for the plaintiff submitted that at this time the Commissioner General had not exercised the powers given to her under **section 36(1)** of the old legal regime under **the East African Customs and Transfer Management Act** and so the plaintiffs counsel submits that the defendants were required to follow the new law which took precedence.

The plaintiffs submit that with the new customs legal regime after 1st January 2005 (the law under the **East African Community Customs Management Act, 2004 Act No. 1 of 2005)** required the Commissioner to give the importer notice of intended sale by publication in the gazette and that unless the vehicle was removed within 30 days from the date of the notice it shall be deemed to have been abandoned to customs for sale by public auction. **Section 42(1) of the East African Community Customs Management Act, 2004** which provides that:

> *"where any goods which have been deposited in a customs warehouse are not lawfully removed within 30days after deposit, then the commissioner shall give notice by publication in the gazette that unless such goods are removed within 30days from the date of notice they shall be deemed to have been abandoned to customs for sale by public auction and may be sold in such manner as the commissioner may deem fit,"*

It is the case for the plaintiff that the defendants did not properly follow this procedure by making the said notification by publication in the Uganda gazette.

The defendant on the other hand submitted that the plaintiff's vehicle arrived and was received at Nakawa on 12th October 2004 and at the Transahara ICD on 13th October 2004 and therefore was supposed to be entered by the plaintiff who was the importer within 21 days either into the customs 1.M7 regime (declaration for warehousing) or the 1.M4 regime (declaration for home consumption) but this was not done and as a result it became customs property as by law provided and the procedures to dispose of it were taken including the preparation of a want entry form, advertising of the sale and actual disposal. Counsel for the defendant relied on **section 36(1) of the East African Customs and Transfer Management Act as adopted by Decree 13 of 1977** which provides that

"where any goods which have been deposited in a customs warehouse are not lawfully removed within two months after deposit, then such goods may be sold by public auction after one months notice of such sale given by the property officer by publication in such manner as the commissioner general may see fit."

I have perused the evidence in this case and the submissions of both counsels. The dispute as presented to court appears to among other things revolve around which customs law ought to be applied. It is not in dispute that the car came in the year 2004 and was therefore to my mind was subject to the law that was in operation at the time was **the East African Customs and Transfer Management Act as adopted by Decree 13 of 1977.** Therefore they were not affected by the coming in to force of the new law the **East African Community Customs Management Act, 2004.**

The other point of contention raised by the counsel of the plaintiff in his submissions under this issue is with regard to the notice that was issued by the Uganda Revenue Authority in the New Vision news paper.

It is the plaintiff's counsel's submission that the law requires the importer to be given notice by gazette which the defendant failed to do. They further submit that the plaintiff's name is Patrick Henry kimbaleeba and not Mbaleeba Harry as was stated in the published notice and that the plaintiff's Toyota Prado chassis number was No.LJ780030221 and not chassis No. 7870030221 which was included in the published notice.

The plaintiff Patrick Kimbaleeba (PW1) during the proceedings stated that neither he nor his clearing agent saw the notice and that had he known that his vehicle was being advertised he would have gone to Uganda Revenue Authority and rescued it.

The defendants on the other hand submitted that the mistakes were a typing error. The defendants in their letter dated 10th October 2005 marked exhibit P25 state that the vehicle was properly described in the news paper advertisement and was therefore lawfully auctioned since it had overstayed the statutory period in the internal container deport. They further stated that the spelling error of the plaintiff's name in the news paper advert did not in their opinion render the auction invalid.

Black law dictionary 7th edition at page 1087 defines a notice to mean'

"A legal notification required by law or agreement or imparted by operation of law as a result of some fact (such as recording of an instrument) definite legal cognizance actual or constructive of an existing right or title.
A person has notice of a fact or condition if that person

1. *has received a notice of it*
2. *has actual knowledge of it*
3. *has reason to know about it*
4. *knows about a related fact*
5. *Is considered as having been able to ascertain it by checking an official filling or rewarding."*

In Halsburys laws of England 4th edition page 92 paragraph 75 it is stated that;
"The particulars set out in the notice should be sufficiently explicit to enable the interested parties to understand the case. They have to meet and prepare their answers and their own cases."

In Halsburys laws of England reference is made to the case **of DC; R v Aylesbury JJ exparte Wishbey {1965}1ALLER 602** where court held that,

> *"Notification of the proceedings or the proposed decision must also be given early enough to afford the persons concerned a reasonable opportunity to prepare representations or put their own case."*

The customs entry no 5361 of 10th February 2005 is clear that the consignee is kimbaleeba Patrick Henry and yet the published notice shows Mbaleeba Harry. I find that what is before court is more than just an accidental typing error and from an objective point of view the two names refer to two totally different people. Mbaleeba Harry instead of kimbaleeba Patrick Henry is no small mistake or typing error as the defendant called it. Notice was not directed to the plaintiff as to alert him of the intended action but rather to one Mbaleeba Harry.

The essence of notice being given therefore is to give or allow the affected individual an opportunity to make response to it in time. When the notice alleged to have been given is of great importance, the party seeking its protection cannot rely on it unless it has been brought adequately to the attention of the other party.

The defendants submission that the spelling error of the plaintiff's name in the news paper advert was minor and immaterial to render auction invalid, has no bearing, as it was not sufficiently explicit as to enable the plaintiffs to act as required and rescue their vehicle from the auction.

In Halsburys laws of England reference is made to the cases of **Russell v Duke of Norfolk [1949] 1ALLER 109 at 117,118 and Sloan .v. General Medical Council [1970] 2 ALLER 686** where it was held that;

> *"…a want of detailed specification may exceptionally be held to be immaterial if the person claiming to be aggrieved was infact aware of the nature the case against him, or if the deficiency in the notice did not cause him any substantial prejudice."*

The notice anticipated under the law is to be addressed to the importer who is the person expected to lawfully remove the goods. Uganda Revenue Authority must use due skill, care and diligence; when giving notice to tax payers. By putting the name Mbaleeba Harry instead of Patrick Henry kimbaleeba is embarrassing and prejudicial to say the least and cannot be said to amount to proper notice because it referred to a totally different person.

It should further be noted that the defendants in their written statement of defense deny any knowledge of the plaintiff acquiring a new chassis for his car as a result of the accident. This is strange because the defendants actually ordered a report on the vehicle from the government chief Mechanical engineer and the plaintiff's clearing agents had written a full report of the accident given to the defendants. Of course the evidence before court does not bear out this pleading by the defendants. Evidently part of the delay in processing this vehicle resulted from the vehicle having been involved in an accident and its particulars being changed. That notwithstanding, the notice published by the defendants had a different chassis number from the one on the importation or entry documentation. A chassis number is a unique identification for a

vehicle and no two vehicles have the same chassis number. A different chassis number, as in this case, clearly means another vehicle which is another material error.

It is also absurd that the defendants went ahead on 10TH February 2005 to make a customs entry number C5361 marked exhibit P14 of the vehicle and even went a head to asses the taxes to be paid yet at the same time the defendants were in the process of auctioning the plaintiff's vehicle. The defendants later on raised a query on the 15th of March 2005 by issuing a query notification/amendment exhibit P15 which query was communicated to the plaintiff who answered all questions raised by the defendant by letters from M/S Bemuga to the defendant dated April 15th 2005 and July 29th 2005 marked exhibit P19, P20 respectively. Once the queries had been resolved by the defendants on the 3rd of August 2005 and the customs value of US $4605 was upheld the defendant went ahead to write the determination on the entry number C5361 exhibit P14. After learning of this determination the plaintiff went ahead and tried to secure his vehicle but in vain.

Its surprising that after answering the query and paying the taxes of 4,901,697/= the plaintiff was advised that his vehicle had already been sold in February 2005 and released to a third party for a sum of Ug.Shs.3,298,925/= (Uganda shillings three million two hundred ninety eight thousand nine hundred and twenty five shillings).This shows lack of coordination between the various arms of the defendant. Had the various departments, of the defendant been working together, then there would not have been a mix-up that involved one arm selling and the other arm querying and making entries of a car that had long been disposed off. This to my mind is evidence of substantial prejudice. In answer therefore to the first issue I find that the defendant did not legally dispose of the plaintiff's vehicle.

Issue No. 2: **<u>What remedies are available to the parties</u>**

The plaintiff claims Special damages as follows;

a) the value of the said vehicle worth Ug.Shs.11,470,000/=;
b) fees for valuation in the ministry of works Ug.shs.400,000/=;
c) tax paid by the plaintiff of Ug.shs.4,901,697;

d) clearing agents charge worth Ug.Shs.400,000/=;
e) Freight to Kampala (Us $ 400) Ug.Shs.740,000/=;
f) costs of repairs of the Vehicle (K.Shs.95,000) Ug.Shs.2,185,000/=;
g) cost of replacement of the body(Us$ 2300) Ug.Shs.4,255,000/=;
h) ticket to United Arab Emirates in April 2003 Ug.Shs.1,942,500/=;
i) Transport to Nairobi in May 2003 (Us$ 1,000) Ug.Shs.1,850,000/=;
j) freight charges (US$ 990) g.shs.1,831,500/= and;
k) a ticket to United Arab Emirates in June 2003 worth (US$ 1050) Ug.Shs.1,942,500/=

Giving a total of Ug.Shs.32,016,500/=

The general rule is that special damages must be specifically pleaded and strictly proved. In **Jivanji v Sanyo co. ltd [2003] EA 84** court held that;

> *"Its trite law that special damages must be pleaded and then strictly proved in order for a plaintiff to succeed on a claim for specific damages."*

In the case of **Raticliffe v Evans [1892] QB 524** which is a leading case on proof of damages court held that;

> *"The character of the acts themselves which produce the damages and the circumstances under which those acts are done must regulate the degree of certainty and particularity with which the damages done ought to be stated and proved. As much certainty and particularity must be insisted on, Both in pleading and proof of damage as is reasonable having regard to the circumstances and to the nature of the acts them selves by which the damage is done to relax old and intelligent principles, to insist upon more would be the vainest pendaty'"*

In light of my findings under issue number one that the vehicle was wrongly sold, I award the plaintiff the sum of Ug.Shs.11,470,000/= (Uganda shillings eleven million four hundred seventy thousand shillings) which was the value of the vehicle. With regard to the taxes, the plaintiff

should collect the refund from the defendant as he had been advised. However I decline to award the other said items because the costs that were incurred like the air travel tickets, the costs of repairs of the vehicle, the cost of replacement of the chassis, the transport to Nairobi and the freight charges have no real nexus with the actions of the defendants.

The plaintiff further claims General damages in the sum of 25,000,000/= as compensation for the suffering and anguish occasioned by the defendant's illegal, wrongful and unlawful acts to wit the time lost and/or used in trying to prosecute the suit and / or return of the assets.

The general principle in the award of general damages is that they are pecuniary compensation given on proof of a wrong or breach. In this regard the claimant must be able to prove quantum and some loss.

In Dr. Denis Lwamafa .v. Attorney General H.C.C.S No. 79 of 1983 Court held that the plaintiff who suffered damage due to wrongful act of the defendant must be put in the position he would have been had he not suffered the wrong.

In this case the award of special damages has done that so I in my discretion I award Ug.Shs.10,000,000/= (ten million Uganda shillings) as general damages.

The plaintiff also prays for interest on the special damages from the 25th August 2005 until payment in full and on the general damages at court rate from the date of filing the suit.

In Harbutt's Plasticine Ltd .v. Wyne Tank & Pump Co. Ltd [1970] 1 QB 447 lord Denning held that,

> *"An 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."*

I accordingly award the plaintiff interest on the award of special damages at 21% per annum from the 25th August 2005 until payment in full and 8% per annum on the general damages from the date of this judgment until payment in full. This sufficiently deal with the issue of the plaintiff being kept out of this money

I also award the plaintiff the costs of the suit.

The court enters judgment in favour of the plaintiff.

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Geoffrey Kiryabwire

JUDGE

Date: 07/04/2009

07/04/09

Judgment read in open court and signed in the presence of;

- C. Ouma for the Defendant
- Kiwanuka Kiryowa for plaintiff
- Rose Emeru – Court Clerk

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Geoffrey Kiryabwire

JUDGE

Date: 07/04/09