THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-CS-0078-2008

JACOB TWIKIRIZE MANYINDO
(Administrator of the estate of the late
DANIEL MWESIGWA MANYINDO :::::::::::::::::::: PLAINTIFF

VERSUS

1. **THE COMMISSIONER CUSTOMS**
2. **UGANDA REVENUE AUTHORITY :::::::::::::::::::: DEFENDANTS**

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

JUDGMENT

The facts of this case are contained in the pleadings and I will not reproduce them here, but are particularly laid out in paragraph 4 of the plaint. This matter proceeded by witness statements, filed by plaintiffs on orders of court. Defendants however did not file any evidence on record as ordered by court. Parties were then ordered by court to file written submissions, from which court would proceed to write a judgment in order to expedite the proceedings.

Both parties filed submissions.

Three issues were listed for determination:

1. Whether the alleged act of falsification of documents was committed with the knowledge, consent or approval of the plaintiff.
2. Whether the defendant unlawfully held the plaintiff's vehicle.

3. Remedies available.

Issue 1:

Whether the alleged act of falsification of documents was committed with the knowledge, consent or approval of plaintiff:

Both the plaintiff and defendant referred court to section 148 of the East African Community Customs Management Act No.1 of 2005; which provides inter alia;

> "*An owner is liable for the acts of the agent*."

It suffices to note that while plaintiff is using section 148 (1) of the EAC-CMA whose provision exonerates the master, the defendant concentrates on section 148, in as far as it regulates and places liability on the owner for acts of a dully authorized agent.

I have carefully examined all the arguments, pleadings and evidence cited in the submissions by both Counsel on this issue. Without repeating them here, I make the following findings:

Defendants referred court to the cases of *Cape Brandy Syndicate vs. IRC (1924) KB 64*, and *Rennel v. IRC (1963) 1 ALLER 803*, to argue that in tax matters statutes must be strictly interpreted. They therefore argued that section 148 of the EAC-CMA places strict liability on the plaintiff for the acts of his agent and he should be held accountable.

However the plaintiff refers to the provision of section 148 (1) EAC-CMA where consent of the owner is to be taken into account. They in submissions in rejoinder fault the defendants' arguments since they called no evidence to controvert the

plaintiff's arguments. They referred to *Samwiri Massa v. Rose ACen 1978 HCB 297*, holding that;

> "*Where facts are not disputed by contrary evidence, the same are taken to be admitted and unchallenged by the other party*."

In further defence of this point in submissions paper No.6, they refer to clip on "*URA meets clearing agents over fraud*" and allege this was part of their cross-examination but the defence failed to call evidence on which to be cross-examined. They therefore argue that alterations alleged to have been done were not done with the knowledge, consent or approval of the plaintiff; and he shouldn't be held accountable for acts which he did not ratify.

I have looked at the evidence on record supplied by the plaintiff in support of the above assertion. This evidence is not challenged by contrary evidence from the defendants. From paragraphs 7, 8,9, 10 and 11, 14 of the witness statement it is shown that the transactions of verification were between the clearing agent and the defendant, and Ministry of works chief mechanical engineer and plaintiff only got to know of the falsification on 9/Aug/2008 upon getting the clearance papers.

This evidence as argued by plaintiff fits in well with the principles of law enunciated in the cited cases by plaintiff regarding liability between the agent and principle.

According to Lee's Dictionary of Practice,

> "*An agent owes to his principle the unremitted exertions of his skill and ability and that all his transactions in that character shall be distinguished by punctuality, honour and integrity*."

If an agent performs several acts some of which are unlawful the lawful acts may be severed from the unlawful acts whereby the agent takes full responsibility for the unlawful acts and shall account for them, "See *Nitedas Taedstik Fabric v. Bruster (1906) 2 CH.6.*

In my opinion therefore going by the law, practice, and evidence on record, I find that section 148 (i) of the EAC-CMA required the "consent" of the owner to the acts of the agent. The issue therefore is found in the negative. The act of falsification of the document was committed without the knowledge, consent or approval of the plaintiff.

2. Whether defendant unlawfully held the plaintiff's vehicle.

Appellants argued that the refusal to release the vehicle pursuant to S.216 (2) of the EAC-CMA after service of the notice of claim on the defendant, the failure to issue a seizure notice pursuant to section 214 (1) of the Act, and the continued holding of the car for three (3) years was unlawful, illegal and contravened the law.

Defendant insisted for reasons stated that defendant lawfully seized and held onto plaintiff's vehicle- defendant referred to sections 123 (1) EAC-CMA, 210, 214, 216, EAC-CMA. It was the argument of defendant that the necessary legal steps were followed, and no law was contravened.

I have examined the laws referred to above, and the facts as pleaded. I have looked at section 214 EAC-CMA, (Procedure on seizure) and 216 (Procedure after notice of claim). I find that these sections impose specific performance directives upon the commissioner. As argued by the plaintiffs in this case, the Commissioner had a duty either to prosecute or to advise the party issuing the notice to go to court. There is evidence on record that the Commissioner did not react to the notice in anyway. Also no notice of seizure was issued to the owner of the goods by the Commissioner. As pointed out by plaintiffs in their evidence and submissions, under paragraph 20 of the witness statement, paragraph 31, 32, of the witness statement, its shown that plaintiff claimed for the impounded vehicle as per section 214 (4), but the Commissioner refused to comply. I have examined exhibits on record from PE.1 to PE.22, referring to evidence by PW.1, in support of the complaints raised under this ground and am satisfied that the defendant unlawfully held the plaintiff's vehicle. This ground is also found in the affirmative.

4. Remedies available to the parties

I agree with defendants that court must deal with this matter aware that the defendant is mandated to collect correct taxes from transactions but must also add that they should do so lawfully.

Plaintiff has argued that their entitled to the amounts pleaded in their submissions.

I however will be guided by the law to hold as follows regarding prayers for amounts as pleaded:

(a) **General damages**:

As held in *Uganda Revenue Authority vs. Wame David Kitamirike CA. 43/2010*,

> "*damages is compensation in money terms through a process of law for loss or injury sustained by the plaintiff at the instance of the defendant*."

Defendant argues that plaintiff suffered no injury. But plaintiff claims he suffered mental stress, psychological torture, anguish, wear and tear of the vehicle, non use and enjoyment of the vehicle. He submits a request for 100,000,000/=. This figure was not specifically pleaded, nor does it have any bearing on anything save what the witness states. This court cannot imagine without a guiding formula to reach at general damages arising out of a normal routine exercise of duty by defendants gone bad. I will therefore allow a nominal compensation for inconvenience suffered- which is just to compensate for time lost in chasing the finalization of assessments and grant him shs. 20,000,000/= (Twenty millions only).

(b) Special damages:

Plaintiff prays for shs. 600,000,000/= as special damages. The law is that special damages must be specifically proved. (See *Kyambadde v. Mpigi District Administration [1983] HCB 44*.

The plaintiff wants court to grant the money as lost rentals for the car without any specific of such loss. No special damages can arise out of nothing. Once damages are not proved, they are not given in this type of category. Therefore, I have no evidence before me on which to assess this damage. The request is not proved and is therefore rejected.

(c) Exemplary damages:

Plaintiff prayed for shs. 100,000,000/= as exemplary damages arising from unlawful withholding of his car. The defence relied on *Kyambadde v. Mpigi District Administration [1983] HCB 44*, which held that apart from statutory provisions two categories of cases have been recognized where exemplary damages should be awarded. First is the case where the conduct of the servants of government towards the plaintiff is oppressive, arbitrary or unconstitutional. Second is where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.

Like special damages, exemplary damages have to be specifically pleaded in the plaint with full particulars and not just as a prayer. See *Afro Motors Ltd v. URA HCCS 355 of 2000*.

In our case none of the above is the position. There was no specific plea in the plaint as above.

Secondly exemplary damages will not be granted in a case of this nature where facts show that a government authority was acting in its mandate trying to enforce compliance to a tax regime but faulted in its procedures. It has not been demonstrated by the plaintiff that while enforcing this mandate government calculated to make profit out of him as held in the cases above. The pain and suffering has already been compensated by the award of general damages and cannot be repeated here. However though not specifically pleaded, in its discretion court can consider awarding punitive damages. (See Black's Law Dictionary at page 390 6th Edition)

(d) Punitive damages:

These are the damages awarded to punish or reprimand the defendant where his action or in action is malicious, heinous and intentional. The witness statement in paragraphs 28, 29, and 35 shows that defendants acted maliciously in total disregard of the rules of procedure which would have mitigated the damages. There were personal egos involved at the expense of reason.

This type of behavior is what punitive damages are meant to address. I am therefore convinced that given the circumstances of the case, plaintiff is entitled to recover shs. 10,000,000/= (10 millions) only as punitive damages.

For all reasons stated hereinabove, I find that the plaintiff has proved his case against defendants on the balance of probability. Judgment is accordingly entered for the plaintiff with costs in terms above. I so order.

Henry I. Kawesa

JUDGE

17.12.2014