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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT-01-CV-CS-0012/1997

BADRU MBAZIRA PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY DEFENDANT

BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI

JUDGMENT

The plaintiff sued the defendant for special and general damages for impounding and detaining his goods. He also asked for interest and costs of the suit.

The background to the suit was as follows. The plaintiff was a trader dealing in children's clothes. He used to ply his trade at Bwera, which is at the customs border post of Mpondwe at the border between Uganda and the Democratic Republic of Congo. He used to purchase his goods from what the defendant's Counsel described as a flea market of Kasindi, said to be about 1 km inside Congo from that border point. His business premises were situate in Mbarara municipality.

On 31st January 1997 the plaintiff bought children's clothes from that market. The quantity is an issue in the case. He brought them across from the Congo border into Uganda using as usual wheelbarrows. These were four units being transported on two wheelbarrows. This was during the height of rebel insurgency in the area and customs officials would not stay at their post. The time was 3 pm, and the customs officials had already returned to either Mbarara or Kasese. At the police checkpoint, he could not proceed with the goods as he had not yet paid the relevant taxes. The goods were thus retained and he waited for the customs officials to return so he could pay the taxes.

While waiting, the anti smuggling unit (ASU) personnel arrived in motor vehicle UAJ 129 Toyota pickup white in colour belonging to the defendant. They loaded plaintiff's goods on the pickup and drove off, directing him to go to Mbarara where he would find

his goods and pay the taxes. One Charles together with several armed personnel was commandeering the operation. It was carried out by or on behalf of the defendant.

The plaintiff asked for a receipt or some document to show that his goods were taken by the agents of the defendant and the quantity therein, but no such document was given to him. He moved to Mbarara as directed by Charles only to be told that the said Charles was operating from Kasese, and that was where he ought to go and secure his goods. He proceeded to Kasese but was directed to return to Mbarara. He did so but still there was no sign of the elusive Charles or his goods.

He reported to the Resident District Commissioner (RDC) of Mbarara, exhibit PE4. The RDC wrote a letter exhibit PE5, to the defendant's Mbarara branch complaining generally that the cantankerous Charles be reigned in and or restrained in his anti smuggling crusade as it was proving counter productive to investment and commerce, but in particular asking the defendant to secure the plaintiff's goods, details of which he disclosed by way of copies of receipts.

The defendants Mbarara branch officials eventually gave him a 'Notice of Goods Deposited in Customs Warehouse' receipt exhibit PE6. The receipt showed that he deposited some 36 dozens of girl's dresses and 11 dozen boys suits. The reason for the deposit was, 'pending settlement of a case with ASU (anti smuggling unit) on smuggling of said goods.'

It would appear that the pending case so remained till the plaintiff brought this action to recover his goods or the money equivalent, interest, damages and costs. The plaintiff claimed that the defendant impounded the following;

- 100 dozen boys suits at \$6,000-
 - 90 dozen girls dresses at \$3,600-
- vide receipt No. 057 exhibit PE1.
- 70 dozen boys suits at \$1,610-
 - 85 dozen London suits for children at \$2,550-

vide receipt No. 058 exhibit PE2

TOTAL AMOUNT

\$13,760-

The receipts were in the French language and had to be translated into the language of the court. The certificate of translation in that respect and the respective translated receipts were admitted in evidence and marked exhibit PE3.

The defendant did not deny impounding the plaintiff's goods. What was denied were the quantities alleged to have been impounded. According to the defendant the only goods, which were impounded from the defendant were those set out in exhibit PE5.

Four issues were set out for determination as follows;

1. Whether the plaintiff imported the goods in the quantities stipulated in paragraph 3 of the plaint.
2. Whether they were of the claimed value.
3. Whether the seizure and the ultimate detention of the plaintiff's goods was proper and in the alternative whether the impounding of the goods by the defendant was legal.
4. What remedies if any, are available to the plaintiff.

The plaintiff testified as PW1, as did one PC Byaruhanga Joshua PW2, who was said to be one of the police officers manning the Npondwe Border police post at the time. For the defendant one witness testified, Corporal Gumikiriza DW1, said to have been the OC of the border police post at the material time.

The first issue for courts determination was whether the plaintiff imported the goods in the quantities stipulated in the plaint. The second issue was whether the said goods were of the value so claimed. I will take these two issues together.

The testimony of the plaintiff was that on the 31/1/1997 he bought children's clothes at Kasindi market in the DRC. He was issued with receipts for the same. The receipts were

in the French language which he did not know. The goods were in four bales. He moved the goods to Uganda on two wheelbarrows each carrying two bales. Upon arrival at the Npondwe border customs post, at 3.00pm, he found that the customs officials were still away for lunch.

The police at the post could not allow him to proceed with his goods before clearing the relevant taxes. While he waited for the customs officials, one Charles of ASU, in company of some four other security officials arrived in a pick up registration no. UAJ 129 belonging to the defendant. They put the goods of the plaintiff on the pick up and drove off. They told the plaintiff that he would find them in their (defendants) office in Mbarara. The plaintiff begged for a document to show that they (ASU) had taken his goods and the quantities therein to no avail.

The following day on 1/2/1997, he went to the Mbarara office of the defendant and was told that the goods had not been seen yet at their office. He returned on 3/2/1997 and one Asimwe the defendants PRO informed him that the said Charles used to operate in Kasese and that was where he ought to check for his goods. He returned to Kasese and at the Secretary at the defendant's office told him that he should go back to Mbarara instead. On the 4/2/1997 in Mbarara he once again received no satisfactory answer as to the whereabouts of his goods. He wrote a complaint to the RDC exhibit PE4 which is dated 5/2/1997.

The RDC responded by letter exhibit PE5 to the defendants Commissioner of Customs & Excise and copied to the Director of ASU in Kampala, the plaintiff and the defendants PRO in Mbarara, castigating the methods of work of the ASU and in particular that of Charles, and how these were counter productive to the stated noble aims of curbing the smuggling of goods.

The plaintiff told court that he went back to the defendants Mbarara office and was told that the notorious Charles had been transferred. His replacement officer i.e. the one in

charge of ASU together with the defendants PRO took him to the store to check for his goods.

In the store he saw some of the goods scattered on the floor. They were collected and taken to the defendant's offices where they were counted. A receipt was issued in respect of those goods exhibit PE6.

The plaintiff gave details of the goods which the agents or servants of the defendant impounded at Npondwe border customs post on 31/1/1997. They amounted in value to US \$ 13,760. The receipts were exhibited as PE1 and PE2 with the details as shown above in this judgment.

The defendant introduced Cpl. Gumusiriza who told court that he was the OC at Npondwe police post during the period when the plaintiff brought in goods from DRC. He told court that these were four pieces of small bundles of children's clothes. Charles of ASU took these goods and told the plaintiff to find them in Mbarara. His evidence was that the plaintiff told him that since Charles had not given him any document to indicate the quantity of the goods, he would sue meaning that he would claim for a higher quantity than that actually taken. That the plaintiff put the value of his goods at between 2 and 3 million shillings only.

He recorded a statement to the police on 7/2/1997 exhibit DE1 in which he stated that Charles of ASU intercepted smuggled goods at the police checkpoint consisting of three small bags and one big bag all from Kasindi market. That the owner of the goods Badru threatened to sue the said Charles in court, since he had not issued him with a receipt. That Badru told the witness that the goods cost less than shs 3 million.

The statement of the officer DW1 contradicted his evidence in court. In the statement he stated that Charles of ASU intercepted smuggled goods. In court he was clear that the said Charles took the goods of the plaintiff together with those of others mainly women to the defendant's office in Mbarara where the assessment for taxes would be made and

payments would be effected from there. The evidence of this officer was that this was a war like situation and customs officers were rare at the border point, particularly in the afternoons. They would work from either Kasese or Mbarara offices.

The taking was therefore not an interception of smuggled goods but rather a necessary inconvenience to deal with the situation on the ground where due to prevalence of rebel activities in the area, which caused insecurity, the customs officers would not be present at all times at the customs border post. The ASU would carry the unaccustomed goods to them at either the Kasese or Mbarara offices and there the assessment and payments would be effected.

That evidence of DW1 in court was corroborated by that of the plaintiff. It was further corroborated by that of PW2 PC Byaruhanga Joshua who told court that he was one of the officers manning the border police post at the material time. He knew the plaintiff a trader in children's clothes. On 31/1/1997 the plaintiff came with four bales of such clothes and the customs officials were away, due to the prevailing insecurity in the area due to rebel activities.

The police could not allow him and other traders to carry away their goods without paying the relevant taxes. The goods were therefore kept at the police post as they waited for the customs officials to return. Before they did so, the ASU people led by Charles came and loaded these goods on their pick up and told the owners to proceed to Mbarara where the customs officials would deal with their respective cases. It is important to note that the goods were not impounded.

The evidence of the witnesses clearly brings out the facts as follows, that the plaintiff bought goods in Kasindi market in DRC. He brought them to Uganda on two wheelbarrows, each carrying two bales. They were children's clothes. The ASU took them to Mbarara for purposes of assessment so that the relevant taxes would be paid. The ASU did not give out receipts of what and how much was taken.

The plaintiff followed up his goods as advised and failed to trace them till 5/2/1997 when he lodged a complaint with the top district official the RDC. Probably due to the intervention of the RDC, the defendants officers at Mbarara called in the plaintiff on 28/2/1997 i.e. almost a full month later and showed him pieces of clothes which they told him were the clothes which were 'impounded'. They gave the plaintiff a form F19 'Notice of Goods Deposited in Customs Warehouse exhibit PE6.

This exhibit was issued almost 30 days after the goods were taken by Charles. The evidence of the plaintiff was that he went to the defendants offices at least 4 times prior to this looking for those very goods, but he was always told they were not there. It was only after the higher authorities intervened that they were all of a sudden found 'scattered all over the ground' in the warehouse. That raises a lot of suspicion that these were not all the goods of the plaintiff.

The exhibit PE6 stated that the goods were deposited in the warehouse 'pending settlement of a case with ASU on smuggling of said goods'. There was no evidence of these goods having been impounded by ASU as smuggled good. The evidence of defendant's own witness in court DW1 was that the goods were only taken by ASU for purposes of assessment of taxes by customs officials who were not present at their post.

The statement of the defence witness DW1 exhibit DE1 cannot be the truth. It was recorded on 7/2/1997 after the RDC had castigated in quite ungenerous terms the modus operandi of ASU. The statement was at the instance of the defendant's officers, obviously in the attempt to salvage their damaged image. The statement talked of the goods having been smuggled and thus the ASU having intercepted them. It does not say where and under what circumstances they were so intercepted yet as the OC of the police post, he ought to know. In his oral evidence in court which was subjected to cross examination, and which was the more reliable evidence, this witness did not even allude to any smuggled goods at all.

That statement was unreliable as evidence. No wonder several weeks later, the defendant's officers came up with Form 19 exhibit PE6 showing a deposit of the goods pending investigations in respect of smuggled goods. What is more, there was no evidence as to what became of such investigations even up to the time of hearing this suit years later.

The only inference is that this was an attempt at damage control over the blotched up methods of work by the field officers of the defendant in respect of the plaintiff's goods. This conclusion is borne out further from the evidence that soon after the plaintiff's goods went missing and there was an extensive inquiry, the one in charge of ASU, the notorious Charles was immediately transferred from the area. Even the police officers including the then OC DW1 were also transferred.

The police officer DW1 gave the value of the plaintiff's goods as between 2 and 3 million. This was information from the plaintiff according to the witness. It was not shown whether they were close friends so that the trader would disclose to one associated with tax collectors the value of his goods, which would impact on the taxes to be assessed. The witness told court that the plaintiff had 4 pieces of goods. That tallied with the evidence of the plaintiff and that of PW2.

There was no denial of the evidence that these four pieces were carried on wheelbarrows meaning that they were heavy. The defence witness put the weight at 10 kilograms each. The plaintiff described them as bales. Whatever their weight the plaintiff produced receipts for the goods. There was no evidence to show that these receipts were not genuine save from the submissions of Counsel from the bar. There was no evidence adduced by the defence to prove that they were forgeries as submitted by Counsel for the defendant.

The quantities and the prices these receipts referred to could not be doubted as being anything other than genuine. The defendant was less than honest when in the attempt to whitewash themselves they claimed that the goods were impounded pending a case of

smuggling of the said goods. That was an obvious lie. There was no attempt at all by the defence to show where these goods were for close to one month from the time they were moved from Npondwe border post. There was no denial that the plaintiff was tossed from office to office as he looked for his goods in vain.

The inevitable conclusion and answer to the issues under consideration are that the plaintiff imported the goods in the quantities as stipulated in the plaint. They were of the value claimed in the plaint. While the initial retention of the goods was lawful in the circumstances prevailing then, the subsequent impounding of the same or to put it more correctly, the conversion of the same was certainly illegal.

That answers the 1st, 2nd and 3rd issues. The 4th issue was on the remedies available to the plaintiff. The defendant was found to have converted the plaintiff's goods to the tune of US\$ 13,760. The plaintiff proved that he lost goods worth that amount at the hands of the defendant. He is entitled to get it back or the equivalent in Uganda shillings at the rate prevailing at the time of filing the plaint.

The goods were for business. The plaintiff expected to get profits from the same. He asked court to award him interest in respect of the amount at a rate of 30%. It was not shown to me that this was a high or unreasonable rate of interest. The defendant did not make any argument against it. I will therefore award interest on the amount awarded herein at the rate of interest of 30% per annum from date of filing the suit till payment in full.

The plaintiff was greatly inconvenienced. He looked for his goods in Mbarara, then Kasese then Mbarara. He moved up to the office of the RDC and lodged a complaint. He was made to look through masses of goods scattered on the floor in the attempt to retrieve his goods from the defendant's store. He instead was shown a small quantity of the goods which were impounded. He did not recover a single item of his goods, as the defendants now claimed that the goods were being held pending the investigations over smuggling. He would therefore be entitled to award of general damages. I would award him a modest

shs 5 million in damages. This amount will carry interest at court rate from time of judgment till payment in full.

The suit is accordingly decided in favour of the plaintiff. The following orders are hereby made.

1. The plaintiff is hereby awarded US \$ 13,760. or the equivalent in Uganda shillings at the rate prevailing at the time of filing the suit.
2. The above sum shall carry interest at the rate of 30% per annum from the time of filing the suit till payment in full.
3. The plaintiff is awarded general damages of shs five million.
4. The general damages shall carry interest at court rate from the date of this judgment till payment in full.
5. The plaintiff shall have costs of the suit.



RUGADYA ATWOKI

JUDGE

25/03/10.

Court: The D/Registrar shall read this judgement to the parties.



RUGADYA ATWOKI

JUDGE

25/03/10.