

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO.11 OF 2011

MUTESI ZUBEDAH----- APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Article 50 & 42 and Section 3 of the Judicature (Amendment) Act 3/2002, Rules 3,4, 6,7 & 8 of the Judicature (Judicial Review) Rules, 2009 for the following reliefs by way of judicial review;

- a. An Order of Certiorari doth issue calling into court the record on which the decision to pass the entry, release and register Motor vehicle Mercedes Benz C180 Elegance Blue in Colour Chassis Number WDB2020182F734569 for quashing and expunging from public records.
- b. A declaration that the respondent being a statutory organ acted illegally by confiscating, holding onto and appropriating the applicant's motor vehicle for no reason and without giving her any hearing.
- c. A declaration that the respondent acted illegally and without jurisdiction in purporting to hold onto and or expropriated the applicant's motor vehicle.
- d. A declaration that the respondent's continued detention or expropriation of the applicant's motor vehicle without reason is forced expropriation of her property which denies her the

value in use from her vehicle and is a violation of her Constitutional protection of her right to own private property which is compulsory deprivation and without paying her prompt and adequate compensation.

- e. An Order of mandamus doth issue directing the respondent to release the applicant's motor vehicle Mercedes Benz C180 Elegance Blue in Colour Chassis Number WDB2020182F734569 in her names forthwith.
- f. An Order of prohibition doth issue prohibiting the respondent from continuing to hold onto the applicant's vehicle.
- g. A declaration that the actions of the respondent were high handed and oppressive and caused the applicant financial loss.
- h. An Order for compensation against the respondent for the financial loss incurred by the applicant while pursuing the recovery of the motor vehicle.
- i. An Order of Injunction doth issue prohibiting the respondent from continuing to act illegally by detaining/expropriating the applicant's motor vehicle thereby denying her the value in use in the motor vehicle and violating the Applicant's Constitutional right to own private property.
- j. Aggravated and exemplary damages.
- k. Special damages as follows;
 - a) Ugx 228,000,000/= being the market price of the motor Vehicle
 - b) Lost value in use in the car from the date of impounding it in November to date of UGX 120,000/= per day which is UGX 25,200,000/= so far.
 - c) UGX 10,574,000/= being money spent on the car that is:-
 - (i) UGX 1,980,000/= to clearing agents and transport from Dar es Salaam to Kampala.

- (ii) UGX 6,574,000/= from London to Dar es Salaam
- (iii) UGX 1,120,000/= being expenses incurred in fueling the vehicle in the course of transporting it from Dar es Salaam to Kampala

1. General Damages

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of the applicant but generally and briefly state that;

- 1) The applicant imported Mercedes Benz C180 Elegance Blue in Colour Chassis Number WDB2020182F734569 and paid all its dues.
- 2) The said vehicle was detained and subsequently expropriated by the respondent.
- 3) The respondent is a statutory body and administrative person vested with the Constitutional duty to receive imports and levy taxes on them on behalf of the Government of Uganda and thereafter release them to the owner.
- 4) That the respondent failed in that duty when they illegally expropriated the applicant's motor vehicle when the applicant went to the respondent's offices to pay taxes for her Motor Vehicle and was told by the respondent that her vehicle has been released whereas not.
- 5) The above decision was taken illegally and without giving the applicant any hearing whatsoever.
- 6) The respondent has prior to that made attempts to illegally sell the applicant's motor vehicle but on all those occasions, the applicant presented credible documents to prove her ownership and compliance with the respondent's statutory requirements whereupon the respondent reversed her decision.

- 7) That because of the respondent's illegal actions the applicant has been deprived of her Motor vehicle and the value which she would have derived from its use from the date the respondent refused to hand over to her the motor vehicle on 7th March 2011.
- 8) The applicant continues to suffer and incur financial loss out of the daily loss of alternative means of transport for which the respondent is liable.
- 9) The applicant and the wider public stand to gain if the orders sought are granted.

The respondents opposed this application and the 1st respondent filed an affidavit in reply through a Customs Officer- Mr Luganga Jacob.

The 1st respondent contended Mercedes Benz C180 Elegance Blue in Colour Chassis Number WDB2020182F734569 was declared at Mutukula border Customs station and the declared consignee was a one Nalukwago Aisha of P.O. Box 30459 Kampala- BOMBO. The Consignment was cleared by Dema Freight Limited as the authorized agents.

That since the taxes had not been paid, the motor vehicle was forwarded to Dubai terminal which is a bonded warehouse. Later the motor vehicle was put on the auction list as the importer had failed to pay taxes for the motor vehicle.

The importer's agent Dema Freight Limited applied to the respondent to have the motor vehicle removed from the auction list after the importer promised to clear the taxes before 10th November 2010. The taxes were paid by Nalukwago Aisha through a bank transfer. The said motor vehicle was on 7th March 2011 registered in the names of the Importer; Nalukwago Aisha registered as UAP 383T. The said importer paid demurrage of UGX 500,000/= to Dubai terminal and the motor vehicle was released from the warehouse and was received by Mambule Wilberforce.

The respondent acted legally within in its Constitutional mandate and registered the Motor Vehicle in the names of Nalukwago Aisha as the consignee on the bill of lading and all other importation documents. The respondent did not exercise her powers arbitrarily, unreasonably, unfairly and discriminatively towards the applicant.

This matter was settled in part in respect of the Motor vehicle in the following terms;

Consent Order

By Consent of both parties, **IT IS HEREBY AGREED AND ORDERED** as follows;

1. That;
 - a) *The applicant deposits UGX 7.277.969/- in court, being taxes, registration and transfer fees in respect of motor vehicle registration number UAP 383T in court within 3 days from the date of signing this order.*
 - b) *The respondent shall receive the said monies from the Deputy Registrar, Civil Division of the High Court in the presence of the Applicant and shall issue an acknowledgment of receipt of the said monies.*
2. *That upon full payment of the above monies, Patrick Kaliisa, being one in possession of the of the logbook of the above motor vehicle, shall surrender the said logbook to the respondent together with transfer forms fully signed by Aisha Nalukwago, the current registered owner, in favour of the Applicant.*
3. *That upon fulfilment of 1 and 2 above, the respondent will effect a transfer of the above motor vehicle into the names of the applicant within 1 week from the date of receipt of the above monies.*
4. *That upon fulfilment of 1,2 and 3 above, the respondent shall hand over the motor vehicle, Registration number UAP 383T to the applicant.*
5. *That the terms of this order are without prejudice and are in no way an acceptance of liability for all or any of the claims made or raised in the main application.*
6. *That any residual claims (if any) in the main suit shall be determined by the trial judge.*
7. *That the respondent shall hence forth allow the applicant access to the above said motor vehicle to inspect its condition*

Dated at Kampala this ...17thday of February..... 2012

The applicant's counsel contended that after the above consent/settlement of the main issue, it was his submission that the only pending issue for determination is the question of damages.

The applicant had filed affidavits in support of his case for damages and the parties decided to cross examine the respective deponents of the affidavits.

After the cross-examination/hearing of this application the parties were directed to file written submissions which I have had the occasion of reading and consider in the determination of this application.

The applicant was represented by *Mr Simon Tendo Kabenge* whereas the respondent was represented by *Ms Mwajuma Nakku* and *Mr Stuart Aheebwa*.

The only issue for court's determination;

Whether the applicant is entitled to damages?

The applicant sought damages to be award in her application.

The applicant prayed for special, general, exemplary and punitive damages. In judicial review court does not award those categories of damages but rather in deserving circumstances where there is justification may award damages.

The habit of seeking damages as if it is an automatic right in every application for judicial review should be discouraged. Judicial review is more concerned with correcting public wrongs and not a way to demand or seek to recover damages.

An individual may seek compensation against public bodies for harm caused by the wrongful acts of such bodies. Such claims may arise out of the exercise of statutory or other public powers by statutory bodies.

The fact that an act is *ultra vires* does not of itself entitle the individuals for any loss suffered. An individual must establish that the unlawful action also constitutes a recognizable tort or involves a breach of contract. See ***Public Law in East Africa by Ssekaana Musa pg 245-249***

The nature of damage envisaged is not necessarily categorized as special or general or punitive/exemplary damage. But such damage is awarded for misfeasance or nonfeasance for failure to perform a duty imposed by law.

The tort of misfeasance in public office includes malicious abuse of power, deliberate maladministration and perhaps also other unlawful acts causing injury. Such abuse of power may arise where the act is done maliciously, that is with the intention of injuring the claimant, or knowing that the act is ultra vires the powers of the public body and knowing that the claimant will probably suffer loss. *See Three District Council v Governors of the Bank of England (1998) 11 Admin L. Rep 281*

A breach of a statutory duty may give rise to a civil action for damages by a person who has suffered harm as a result of that breach. However not all statutory duties give rise to a right to damages.

In principle, the question is whether, as a matter of statutory construction, Parliament intended to confer a right to sue for damages in the event of a breach of the duty imposed by the statute. See *R v Deputy Governor of Parkhurst Prison, ex p. Hague [1992] 1 AC 58* and *Olotu v Home Office [1997] 1 WLR 328 at 336*.

The applicant upon entering into a consent to have the motor vehicle released to her upon a conditional payment of some money, it became apparently clear that the applicant did not have any basis to challenge the respondent since the Motor vehicle had been properly registered in the names of Nalukwago Aisha who was the registered owner and the importer of the said Motor vehicle according to the bill of lading as the consignee.

The applicant did not have any residual claims in the main suit/cause after the signing of the consent. If at all there were any such residual claims the applicant had a duty to prove the said claims against the respondent since the signing of the consent was not an acceptance of liability.

The application was baseless and devoid of any merit against the respondent who properly dealt with the person who had imported the Motor Vehicle into the country and also paid for the taxes of the said vehicle before it was released to her as the registered owner.

According to court, the respondent played a role of a Mediator in ensuring that the applicant recovers her motor vehicle from Aisha Nalukwago who had imported the same and subsequently got it registered in her names as the owner/importer or consignee.

The applicant is not entitled to any damages since the respondent has not been found to have been liable for any wrong doing in exercise of its statutory duties and powers.

The application is dismissed with costs to the respondent.

I so Order.

SSEKAANA MUSA

JUDGE

5th/07/2019