THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO. 449 OF 2018

AHUMUZA NABOTH:::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

1. **BUTUNGIRO JACKSON**
2. **ATTORNEY GENERAL :: DEFENDANTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff instituted this suit against the defendants for declaration that he is the lawful owner of motor vehicle reg. no. UAZ 235M herein the suit vehicle, the 1st defendant in particular fraudulently/illegally acquired it and the 2nd defendant acted illegally in the matters of the same.

The plaintiff claims that he employed the 1st defendant to drive the vehicle in March 2017 for purposes of transporting his timber and general merchandise for other clients. That the 1st defendant worked diligently until sometime in September 2017 when he disappeared with the motor vehicle upon which the plaintiff reported a case of theft of same motor vehicle at Katwe Police vide SD Ref 64/12/10/2017 on 12/10/2017.

The motor vehicle was impounded and parked at Ndeeba Police post on 2/11/2017 vide Ref SD/17/02/11/2017 but sadly released to the 1st defendant the very next day at Katwe Police and when the plaintiff complained, he was told how the 1st defendant brought bank slips to police

which he alleged was evidence that he had banked money on the account of the plaintiff as purchase price for the suit vehicle.

The plaintiff denied ever selling his vehicle to the 1st defendant and confirmed that he had not yet even completed the purchase price therefore he complained about the conduct of the police to the Police Standard Unit. The plaintiff was able to get the vehicle impounded again but when he got to Katwe Police he was arrested on ground that he had given false information and had obtained money by false pretense which complaint had been filed by the 1st defendant on 16/11/2017 and the vehicle was released.

The 1st defendant counterclaimed seeking orders that a declaration that the counterclaimant is a lawful and bonafide owner of the motor vehicle Registration No. UAZ 235M Mitsubishi Fuso Lorry, a declaration that the Motor vehicle was illegally impounded by the counter defendant, a declaration that the counter defendant claims no interest whether legal and or equitable in Motor vehicle Registration No UAZ 235M Mitsubishi Fuso Lorry, permanent injunction against the counter defendant's agents, servants, employees from interfering, using wasting and or dealing with the same in any way that is prejudicial to the counterclaimant's interest, General damages, interest on general damages, costs of the suit and any other relief court deems fit.

The 1st defendant's brief facts are that around the 20th day of April 2017, the 1st defendant entered into an oral sale and purchase agreement with the plaintiff for the suit motor vehicle at a consideration of Ugx 70,000,000/=, the 1st defendant paid in installments Ugx 65,000,000/= leaving an outstanding balance of Ugx 5,000,000/= which was to be paid upon receipt of the Log Book of the said vehicle. The said payments were made on the plaintiff's Bank Account No. 2120031740, held in Centenary Bank as on the 2nd day of May 2017, Ugx 20,000,000/=, on the 11th day of May 2017, Ugx 30,000,000/=, on the 06th day of July 2017, Ugx 15,000,000/=.

That after 8 months of demanding for the vehicle Log Book, the plaintiff turned around and fraudulently reported a case at Katwe Police Station stating that the 1st Defendant stole his vehicle upon which the said vehicle was impounded by police and later released to the 1st defendant after presenting proof of payment for the vehicle by the bank receipts. The 1st defendant discovered at police that the log book was still in the hands of Pak Fazal Investments a company where the plaintiff had bought the same vehicle and remained with a balance of Ugx 22,800,000/= which he deposited at Katwe Police Station and in total, the 1st defendant paid Ugx 87,800,000/=.

The 1st defendant has never carried on a trade of being a driver of different cars nor supplied timber and the plaintiff has no interest(s) in the said motor vehicle either legal or equitable and his interests passed to the 1st defendant.

The plaintiff was represented by Mr. Kwemara Kafuuzi while the 1st defendant was represented by Mr. Barungi Richard and Mr. Ronald Mugisa. Ms Josephine Kiyingi represented Attorney General

The parties were directed to file written submissions which were considered by this Court.

Agreed issues

I. ***Whether there was a contract of sale of a motor vehicle between the plaintiff and the 1st defendant, if yes.***
II. ***Whether such contract was breached***
III. ***Whether the 2nd defendant is vicariously liable for actions of police***
IV. ***Remedies.***

The 1st Defendant submitted on burden of proof by citing ***Sections 101, 102, 103 and 106 of the Evidence Act Cap 6, Sebuliba vs Cooperative Bank Ltd [1987] HCB 130, Nsubuga vs Kavuma***

[1978] HCB 307, Lugazi Progressive School & Anor vs Serunjogi & Anor [2001-2005] HCB Vol 2 page 121 at page 122, Dr. Vincent Karuhanga t/a Friends Polyclinic vs N.I.C & Uganda Revenue Authority [2008] HCB 151 at page 152.

<u>*Determination of issues*</u>

Whether there was a contract of sale of a motor vehicle between the plaintiff and the 1st defendant, if yes / whether such contract was breached

The plaintiff's counsel submitted that the 1st defendant was his driver from March 2017 up to September 2017. He stated that he gave his vehicle to the 1st defendant to ferry his timber from Rukungiri and other destinations to Kajjansi where he has a timber dealership or to the other destinations where his customers happened to be. He also testified that the 1st defendant carried other merchandise for other customers for a fee out of where the 1st defendant would set aside Ush 60,000/- per route as his payment. He testified that in April 2017 the 1st defendant informed him that he got the customers from South Sudan and he asked that he be allowed to have timber which he would deliver to these dealers keeping the difference between the price the plaintiff was offering and the one he would negotiate directly with the dealers. The plaintiff testified that he allowed the 1st defendant to deliver timber worth Ush 21,490,000/- between 20/4 and 30/4/2017 for which he paid that sum into the plaintiff's Centenary Bank account No. 2130031740 on 2/5/2017.

Plaintiff's counsel further submitted that between 5/5/2017 and 10/15/2017 he let the 1st defendant deliver to his customers timber worth Ush 28,515,000/- and the 1st defendant deposited Ush 30 million to the account on 11/5/2017. This sum included the balance of Ush 1,490,000/- left from the 1st set of transactions. Finally on 6/7/2017 he deposited Ush 15 million being the value of timber taken between 25/6 and 3/7/2017. When this sum is totaled vis-a-vis

the volume and the price of the timber he took (PE27) the 1st defendant remains indebted to the plaintiff upto Ush 13,000 to date. The plaintiff relied on the testimony of Twinomugisha Vito (PW2) who confirmed that he has been working with the plaintiff in his timber business since 2011 right from Rukungiri where the business begun and now is the salesman at the plaintiff's Kajjansi depot. PW2 also testified that the suit Vehicle was bought the plaintiff from Pak Fazal in October 2016 and he gave it to one Turyafuna Arthur to drive it. Turyafuna Arthur drove it upto sometime in March 2017 when following a misunderstanding the plaintiff employed the 1st defendant to drive the Vehicle. The Vehicle according to PW2 was carrying timber for the plaintiff or other merchandise for other traders at a fee. The timber would be delivered to Kajjansi by the 1st defendant. PW2 confirmed that the plaintiff's story that between April – July 2017, PW1 authorized him to give to the 1st defendant timber of whatever amount he asked for because he got a lucrative deal with dealers from South Sudan The said witness confirmed that the defendant collected timber several times from the depot at Kajjansi but that in September 2017 he did not see him he had disappeared with the Vehicle

Counsel for the plaintiff made effort to produce the presence of the District Forestry Officer of Rukungiri to confirm not only that he was a dealer in timber but also the 1st defendant was driving the suit vehicle and carrying the plaintiff's timber. Documents to this effect were admitted as PE16 – 23 and the 1st defendant's counsel extensively cross-examined our client. PE16 – 23 were forest produce permits and treasurer receipts issued by Rukungiri District Local Government. Two sets of such documents namely P20 – P23 refer to the 1st defendant and the plaintiff stated that they were left by the 1st defendant at his Kajjansi Depot (we refer to paragraphs 40, 41 of the plaintiff's witness statement) and in cross examination where he stated that the documents were delivered by the defendant at Kajjansi along with the timber. The plaintiff was cross-examined and he confirmed that he did not have any record showing

that the 1st defendant was his employee. He confirmed, however, that he had known the 1s defendant from October 2016 when he met him at Green Zone Parking Area, Ndeeba where the plaintiff's Vehicle parked often in order to source work. The plaintiff indicated how he had seen the 1st defendant driving before he gave him a job; that he even saw his permit whose copy he didn't keep unfortunately. The plaintiff testified that he knows where the defendant stays right from Kanungu where he took him to his shop premises and showed his wife. The plaintiff testified that it's the 1st defendant who approached him to drive the suit motor vehicle after the plaintiff parted ways to Turyafuna Arthur its previous driver.

Counsel for the plaintiff invited court to consider with interest a pleading in paragraph 6(c) of the 1st defendant's WSD where he alleges that it was the plaintiff's driver one Turyafuna Arthur who handed the motor vehicle to him.. Instead they alleged it was the turn man! A turn man whose names they didn't even know. This amounts to departure from pleadings contrary to O.6 R.7 CPR and is evidence of falsehoods on which the defence is built. ***See Captain Harry Gandy vs Caspair Air Charter Ltd, Uganda Breweries Ltd vs Uganda Railways Corporation SCCA No. 6/2001 [2002] UG SCI.***

The plaintiff counsel submitted that it isn't reasonable for a person to enter a contract with another selling to him a motor vehicle of such high value without any written terms or deposit being paid to him, when he did not know him at all. ***See Section 10 of the Contracts Act.*** It was submission of counsel that none of the considerations for a contract were present in the purported agreement between the plaintiff and the 1st defendant, no offer was made by the plaintiff and the 1st defendant, no consideration was ever paid as the money that the 1s defendant deposited on the plaintiff's account was sale for the plaintiff's timber and most importantly, there was no consensus ad idem. ***Section 2, 10(5) of the contract's Act, Greenboat Entertainment Ltd vs City Council of Kampala HCCS No. 0580 of 2003.***

The 1st defendant's counsel submitted that around 20th day of April,2017,through the broker and driver one Mbagumize Gerald, he was led to the Suit Motor Vehicle that belonged to the plaintiff and was parked at Green view parking at Ndeeba and after physical inspection of the same ,the Defendant entered into an oral sale and purchase agreement of the same Motor Vehicle (UAZ 235M Fuso Fighter) with the Plaintiff and the agreed purchase price was Ugx 70,000,000/= (Seventy million shillings only). ***See Section 2 of the Contracts Act, Traitel in his Book, the Law of Contract 8th Edition quoted in page 1 of Chitty on Contracts – General Principles (Sweet & Maxwell) at page 263, Polock – Principles of Contract, 13th Edition at page 1, Greenboat Entertainment Ltd vs City Council of Kampala HCCS No. 0580 of 2003, O.6 R.15 of the Civil Procedure Rules.***

1st defendant's counsel submitted based on the evidence of both parties, the transaction between the parties was oral, no written agreement was ever made between them. The suit motor vehicle was handed over to the 1st defendant after a road test to Kanungu by the plaintiff's driver, when it was parked at the Green Park view Ndeeba and when the 1st defendant made the 1st payment, the plaintiff took his turn man from the said suit motor vehicle which facts are contained in the evidence of DW2 and was not challenged by the plaintiff.

There was no evidence produced by the plaintiff to show that the 1st defendant has ever been a timber dealer, the plaintiff failed to show that the 1st defendant was his driver, there was no record from the plaintiff that the 1st defendant ever worked for the plaintiff in that capacity as a driver. In this case it was the sole responsibility of the parties to ensure that they performed the terms and conditions set therein, it's also on the record that later the 1st defendant discovered that the plaintiff had not paid the entire purchase price for the said motor vehicle to Pak Fazal investment Ltd contrary to the interests of the 1st defendant in the

said suit motor vehicle and the plaintiff wants to claim both the suit motor vehicle and the 1s defendant's money.

The 1st defendant's counsel submitted that the plaintiff reported this matter after eight (08) months of the 1st defendant using the suit motor vehicle this clearly shows that the said the motor vehicle was never stolen by the 1st defendant as alleged by the plaintiff. Otherwise no person would wait for eight (08) months to report that there motor vehicle had been stolen. There was no evidence adduced by the plaintiff to show that the 1st defendant was in the of business of supplying timbers to several customers, the 1st defendant even paid more money (balance for the suit motor vehicle at the police) compared to what was claimed by the plaintiff, there was no delivery notes that the 1st defendant supplied timber worth 21,490,000/= as alleged by the plaintiff in his witness statement and his counsel, all the money that was paid to the plaintiff was in respect of purchase of the motor vehicle registration No. UAZ 235M, Fuso lorry white in colour chassis No. FK417K-550248. P.W.2 in his testimony alleged that the 1st defendant used to come and pick timber, but no evidence was ever adduced by the said witness that the 1st defendant ever received any timber from him not even an invoice was made by P.W.2. The plaintiff told court that the 1st defendant used the suit motor vehicle to go to up country, depending on where he got the job, but there was no evidence of the 1st defendant remitting money to the plaintiff, the 1st defendant was not paying the plaintiff, there was nothing to show that the 1st defendant was earning a salary as a driver, all this shows that the 1st defendant never worked for the plaintiff as the driver as alleged by the plaintiff and his witness P.W.2. The said P.W.2 was the same person who took the suit motor vehicle to Kanungu with one Mbagumize Gerald (D.W.2) and worked on the same motor vehicle until the 1st defendant paid the two (02) installments to the plaintiff. There was no evidence of the employment of the 1st defendant by the plaintiff as of March

2017 and the plaintiff acknowledged that he had no such records. There was no evidence that was adduced by the plaintiff to show that the 1st defendant was working for another person in that capacity of the driver. The plaintiff informed court that the 1st defendant made the last payment on the 2nd day of May, 2017, the plaintiff further stated that there was no scenario when the 1st defendant could make a payment before taking the timber, at closure look bank statement P.Exh.15, the payments were made way back before the alleged deliveries by the plaintiff which clearly shows that this was not payment for timber but for the suit for motor vehicle.

Counsel submitted that as per evidence of P.W.2, there was no evidence to show that the 1st defendant was delivering timber for and on behalf of the plaintiff. P.W.2 did not show how much timber was supplied to the 1st defendant in the absence of the supplied timber, such dealings were not documented. The 1st defendant denied ever going to Kajjansi depot to pick timber or supply timber to the plaintiff. As per the evidence of P.W.2, he was informed by the plaintiff that the 1st defendant disappeared with the said motor vehicle in September 2017, but no complaint was ever lodged by plaintiff to any authority until 02nd, day of November, 2017, this was an afterthought by the plaintiff. There is no person who loses his motor vehicle and waits for two (02) months, to go to police to report the loss of the same. The 1st defendant's evidence in his statement is unchallenged; he started using the suit motor vehicle form 20th, day of April, 2017. It was not until the 1st defendant persistently claimed for the log book that the plaintiff reported that the motor vehicle was stolen by the 1st defendant. This clearly shows that the plaintiff was avoiding his obligation of paying the remaining balance of Ugx. 22,800,000/= (twenty two million eight hundred thousand shillings only) which was being demanded by Pak Fazal investments yet the 1st defendant was claiming for the said log book.

The plaintiff's evidence does not show, the date and the month when exactly the suit motor vehicle was stolen by the 1st defendant, this shows that the plaintiff's claim is malicious and all intended to deprive the 1st defendant of his motor vehicle. From the above observations, the plaintiff's evidence cannot be relied on as truthful by this court since there was no explanation given by the plaintiff to explain and or clarify on the said inconsistencies in his evidence yet there are major and go to the root of this matter. For the alleged forest movement permit dated the 02nd, day of September, 2016, the same was not signed by the 1st Defendant, nor does it bear his name, the same was not in the possession of the 1st Defendant. It was with P.W.2, P.W.2 got to know the 1st Defendant in 2016, when he stated delivering timber to Kajjansi, he came as a customer, yet in his evidence he stated that he knew him as a driver of different cars, no owner of the said motor vehicle were ever presented as witnesses by the plaintiff.

1st defendant's counsel submitted that P.W.2 stated that the 1st Defendant did not sign on any document because he was dealing with the plaintiff, he said that the 1st Defendant took 8 trips of timber, but there was no record to show the taking of the timber, P.W.2 did not know when Arthur stopped driving the suit motor vehicle because, he was withdrawn from motor vehicle registration No. UAZ 235m Mitsubishi Fuso lorry as a turn man by the plaintiff after the 1st installment was made by the 1st Defendant and he was not aware if the motor vehicle was sold or not. Mbagumiza Gerald, who drove the said motor vehicle on the instruction of the 1st Defendant, from Kampala to Kanungu testified as D.W.2, the suit motor vehicle was parked at Green view park at Ndeeba; the 1st Defendant has never been a timber dealer.D.W.2 is the one who identified the suit motor vehicle for the 1st Defendant; a one Turyafuna Arthur was the driver of the said motor vehicle.

Counsel for the 1st defendant submitted that the evidence on court record, it is very evident that it is the driver Turyafuna Arthur that gave the key for the suit motor vehicle to Mbagumize Gerald, who drove it with PW2 to deliver the suit motor vehicle to the 1st defendant at Kanungu and the 1st defendant has not departed from his pleadings in light of ***O.6 rule 7 of the Civil Procedure Rules.*** The motor vehicle was duly handed over to Mbagumize Gerald for and on behalf of the 1st defendant and such claims as put by the plaintiff's counsel should be disregarded by this Court. ***See Pioneer Shipping Ltd vs B.T.P Tioxide Ltd (1982) AC 724, Reardon Smith Lime Ltd vs Hansen Tagen (1976) 1 WLR 989, MC Cutchhoene vs David MacBrayne Ltd (1969) WLR 125.***

Counsel for the 1st defendant further submitted that, it is a principle that, a party as a general rule will not be allowed to unjustly benefit from or unjustly enrich himself to the detriment of another. The 1st defendant was summoned by police and he presented evidence of Bank slips as proof of payment for the said motor vehicle and yet the plaintiff received that the 1st defendant's money and he also wants to claim the suit motor vehicle as his, therefore the plaintiff cannot have both the 1st defendant's money and the motor vehicle at the same time. ***see Fibrosa Spolka Akcyjna vs Faibraim Lason Combe Barbour Ltd (1943) AC page 32 at 61, Chitty on Contracts Vol. 1 28th Edition Sweet and Maxwell at Para 30-016.***

1st defendant's counsel submitted that the plaintiff benefited from this transaction and he is estopped from claiming otherwise that the contract sum was exceeding the required sums as per the said provisions of the law. ***See Ronald Kasibante vs Shell (U) Ltd HCCS No. 542 of 2006, United Building Services Ltd vs Yates Muskrat T/a Quickest Builders & Co. HCCS No. 154 of 2005, Black's Law Dictionary 8th Edition at page 200, Treitel in his book, the Law of Contract 8th Edition quoted in page 1 of Chitty on Contracts – General Principles (Sweet and Maxwell) at Page 263, Pollock – Principles of Contract, 13th Edition at page 1.***

DETERMINATION

In the case of ***Wells vs Devani 2019, UKSC 4,*** Lord Briggs observed that;

"Lawyers frequently speak of the interpretation of contracts (as a preliminary to the implication of terms) as if it is concerned exclusively with the words used expressly, either orally or in writing, by the parties. And so, very often, it is. But there are occasions, particularly in relation to contracts of a simple, frequently used type, such as contracts of sale, where the context in which the words are used, and the conduct of the parties at the time when the contract is made, tells you as much, or even more, about the essential terms of the bargain than do the words themselves. Take for example, the simple case of the door to door seller of (say) brooms. He rings the doorbell, proffers one of his brooms to the householder, and says "one pound 50". The householder takes the broom, nods and reaches for his wallet. Plainly the parties have concluded a contract for the sale of the proffered broom, at a price of £1.50, immediately payable. But the subject matter of the sale, and the date of time at which payment is to be made, are not subject to terms expressed in words. All the essential terms other than price have been agreed by conduct, in the context of the encounter between the parties at the householder's front door.

So it is with the contract in issue in the present case. All that was proved was that there was a short telephone call initiated by Mr Devani, who introduced himself as an estate agent, and Mr Wells, who Mr Devani knew wanted to sell the outstanding flats. Mr Devani offered his services at an expressly stated commission of 2% plus VAT. It was known to both of them that Mr Wells was looking for a buyer or buyers so that he could sell the flats, and it was plain from the context, and from the conduct of the parties towards each other, that Mr Devani was offering to find one or more buyers for those flats. The express reference by Mr Devani to the 2% commission was, in the context, clearly referable to the price receivable by Mr Wells upon any sale or sales of those flats achieved to a person or persons introduced by Mr Devani. Furthermore it was evident from the fact that nothing further was said before the conversation ended that there was an agreement, intended to create legal relations between them, for which purpose nothing further needed to be negotiated.

The judge decided the case by reference to implied terms. But it follows from what I have set out above that I would, like Lord Kitchin, have been prepared to find that a sufficiently certain and complete contract had been concluded between them, as a matter of construction of their words and conduct in their context rather than just by the implication of terms, such that, by introducing a purchaser who did in fact complete and pay the purchase price, Mr Devani had earned his agreed commission."

In ***Marks & Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd*** **[2015] UKSC 72**; **[2016] AC 742**, the Supreme Court made clear that there has been no dilution of the conditions which have to be satisfied before a term will be implied and the fact that it may be reasonable to imply a term is not sufficient. Lord Neuberger of Abbotsbury PSC, with whom Lord Sumption and Lord Hodge JJSC agreed without qualification, explained (at paras 26 to 31) that (i) construing the words the parties have used in their contract and (ii) implying terms into the contract, involve determining the scope and meaning of the contract; but construing the words used and implying additional words are different processes governed by different rules. In most cases, it is only after the process of construing the express words of an agreement is complete that the issue of whether a term is to be implied falls to be considered. Importantly for present purposes, Lord Neuberger also made clear (at paras 23 and 24) that a term will only be implied where it is necessary to give the contract business efficacy or it would be so obvious that "it goes without saying.

According to the submissions of the 1st defendant, the transaction between the parties was oral, no written agreement was ever made between them. The suit motor vehicle was handed over to the 1st defendant after a road test to Kanungu by the plaintiff's driver, when it was parked at the Green Park view Ndeeba and when the 1st defendant made the 1st payment, the plaintiff took his turn man from the said suit motor vehicle which facts are contained in the evidence of DW2 and was not challenged by the plaintiff.

The 1st defendant adduced evidence of payment for the suit motor vehicle although the plaintiff claimed that the former was his employee, a fact which he failed to prove. The plaintiff claimed his driver stole his vehicle but he never reported for a period of over 7 months.

Under the **Traffic and Road Safety Act section 148**; ***Any person who employs any other person to drive a motor vehicle, trailer or engineering plant shall at all times keep a written record of the name and driving permit number of that other person……***

The plaintiff was committing an offence under the Act for not keeping the particulars of his employee as he alleged. The above provision shows the importance of establishing whether the 1st defendant was indeed an employee.

The 1st defendant categorically testified that he does not know how to drive and does not possess any driving permit. The plaintiff's version of events does not add up and points to falsehoods intended to mislead court.

Lastly, the 1st defendant paid the balance of the purchase price to original owner in whose possession was the original logbook.

I therefore find that there existed a contract of sale of the motor vehicle between the plaintiff and the 1st defendant, which contract was breached by the plaintiff.

Whether the 2nd defendant is vicariously liable for actions of police

Counsel for the 2nd defendant in his submission objected to the plaintiff's suit on grounds that it does not disclose a cause action against it and the same is an abuse of court process. The 2nd defendant raised a preliminary objection under *0.7 rule 11(d), order 6 the civil producer Act cap. 17 Laws of Uganda*. The same principle upheld in the supreme court in the case of ***Major Gen Tinyenfuza vs Attorney General Constitution Petition No.1 of 1999*** where Oder JSCV (as then he was) observed that the effect of above rules is that the defendant in suit or the respondent in a suit or the Respondent in a petition may raise preliminary objection before or at the commencement of the hearing of the suit or petition that the discloses reasonable cause of action. It is a legal requirement that the plaintiff's suit must disclose a cause of action. It ought to be rejected under 7 rule 11 (a) of the civil procedure Rules. Further under Order 6 rule 30, the court is empowered to strike out pleading on the ground that the same does not disclose a cause of action.

The 2nd defendant's counsel submitted that the test has to whether the suit discloses a cause of action was laid down in the case of ***Ssemakula versus Sserunjogi HCCS No. 187 of 2012*** cited ***Tororo Cement Co. LTD versus Frokina International LTD: Civil Appeal No.21 2001*** laid down three essentials namely:-

> *"That the Plaintiff enjoyed a right, the right was violated and the Defendant is liable."*

That the gist of this case is ownership of the motor vehicle registration no UAZ 235M, the 2nd defendant was unfairly dragged into court before resolving the issue at hand of ownership.

The issue of vicarious liability by the 2nd defendant is not viable as ownership is still in issue. A look at the pleadings and submissions the instant case is premised on contractual obligations formal or implied between the 1st defendant and the plaintiff which have to be resolved. ***Okot Ayere Olwedo Justin vs Attorney General, HCCS No. 381 of 2005.***

2nd Defendant's counsel further submitted that according to *Section 103 of the Evidence Act*, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. ***Joselyn Barugahare vs Attorney General SCCA No. 28 of 1993, Kailash Mine Limited vs B4S Highstone Limited HCCS No. 139 of 2012, Dr. Vicent Karuhanga t/a Friends Polyclinic vs National Insurance Corporation & Uganda Revenue Authority HCCS No. 617 of 2002 [2008] ULR 660 at 665, Takiya Kaswahili & Anor vs Kajungu Denis, CACA No. 85 of 2011.*** It was incumbent for the plaintiff to first prove that the suit vehicle was his vehicle and the 2nd defendant's agents unlawfully, negligently and or maliciously released it to the 1st defendant.

DETERMINATION

I agree with the submissions of the 2nd defendant in regards to cause of action, however, my emphasis is going to be about the aspect of vicarious liability.

According to **the *East African Cases on the Law of Tort* by E. Veitch (1972 Edition) at page 78,** an employer is in general liable for the acts of his employees or agents while in the course of the employers business or within the scope of employment. This liability arises whether the acts are for the benefit of the employer or for the benefit of the agent. In deciding whether the employer is vicariously liable or not, the questions to be determined are: whether or not the employee or agent was acting within the scope of his employment; whether or not the

employee or agent was going about the business of his employer at the time the damage was done to the plaintiff. When the employee or agent goes out to perform his or her purely private business, the employer will not be liable for any tort committed while the agent or employee was on a frolic of his or her own.

Section 4 (1) of the Police Act, Cap 303, provides the many functions of police among which is to protect the life, property and other rights of the individual. Furthermore, ***Section 24 (1) of the Police Act, Cap 303*** states that a police officer who has reasonable cause to believe that the arrest and detention of a person is necessary to prevent that person…………from causing loss or damage to property……….. ***Section 24 (2) of the same*** states that a person detained under subsection (1) shall be released, once the peril, risk of loss, damage or injury or obstruction has been sufficiently removed.

In the instant case when the suit motor vehicle was impounded, the 1st defendant adduced receipts of payment to the police that show that he had purchased the same from the plaintiff and that the plaintiff was the one who had failed to honor their agreement. This evidence adduced by the 1st defendant led to the release of the impounded suit vehicle and the detention of the plaintiff.

I have considered all the evidence adduced by all parties before court and I am inclined to believe that the 2nd defendant's agents were exercising their statutory duties at all times. And that the plaintiff's suit doesn't disclose any cause of action against the 2nd defendant.

Remedies.

General damages are such as the law will presume to be direct natural probable consequence

The plaintiff's claim fails and he is not entitled to any of the remedies sought. The plaintiff's suit is dismissed with costs.

The defendant/counterclaimant succeeds on his claim and he is entitled to the following reliefs;

1. A declaratory order that he is rightful owner of the Motor vehicle registration No. UAZ 235M Mitsubishi Fuso Lorry.

2. A declaratory order that the motor Vehicle registration No. UAZ 235M Mitsubishi Fuso Lorry was illegally impounded by the plaintiff/counter-defendant.

3. The 1st defendant in his evidence shows that he actually paid more money beyond the agreed purchase price when he paid 17,800,000/= to Pak Razal the importer of this vehicle to retrieve the log book on top of the purchase price. He is entitled to recovery of 17,800,000/=.

4. General damages; In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basis of the measure of damage is restitution. ***See Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KARL 21***

   The plaintiff has suffered damages ever since the plaintiff inconvenienced him in his baseless complaints to police. He awarded damages of 20,000,000/=.
5. The 1st defendant is awarded further damages or compensation for the injunction sought by the plaintiff and the same led the vehicle to be impounded and parked at the court premises since 23rd November 2018 computed on the basis of loss of income of 50,000,000/= (Under section 65 of Civil Procedure Act)

6. The decretal awards shall carry a uniform interest from the date of filing the suit at the rate of 18% until payment in full.

7. The defendants are awarded costs of the suit and 1st defendant/counterclaimant is entitled to costs of the counter-claim.

I so order.

Dated, signed and delivered by email & WhatsApp at Kampala this 15th day of May 2020

SSEKAANA MUSA
JUDGE