IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM

COMMERCIAL CASE NO. 68 OF 2020

R&K TRUCKING LTD.....PLAINTIFF

VERSUS

SABIHI RASHID NOKOLAGE.....1ST DEFENDANT

JOE OCEAN CLEARING &
FORWARDING CO. LIMITED .....2ND DEFENDANT

Last Order: 30th Dec. 2021
Judgement: 23rd February 2022

JUDGEMENT

NANGELA, J.:

The Plaintiff, a limited liability Company registered and incorporated under the Companies Act, Cap.212 R.E 2019, is jointly and severally suing the Defendants claiming for payments of, among others, **USD 36,400.00**, being losses suffered by the Plaintiff owing to conversion and unauthorised use of the Plaintiff's Truck with registration front Plate **No. T256 DHL** and Trailer **No.T579 DHM**.

The Plaintiff is praying for Judgment and Decree against the Defendants as follows:

1. That, the Defendants be ordered to pay the Plaintiff USD 200.00 (per trip for loading and off-loading of the cargo.
2. An order for payment of a total of USD 36,400/- for non-use of the Truck from 10th April 2020 to-date.
3. An order for payment of a sum of TZS 50,000,000.00 as general damages for loss of business.
4. Payment of accrued Port charges subject to assessment.
5. An order for payment of an interest at a rate of 12% on the USD 36,400 in full and 21% rate for the TZS 50,000,000.00 in full respectively from the date of default until the date of judgement.
6. An order for payment of an interest on the Decretal amount at Court rate of 7% per annum from the date of Judgement to the date of full satisfaction.
7. Costs of this suit.
8. Any other relief as this Honourable Court may deem fit and just to grant.

Upon service of the Plaint, the 2nd Defendant filed a written statement of defence (WSD) on the 1st of September 2020. The 2nd Defendant did as well raise a counter-claim and a preliminary objection. However, the preliminary objection raised by the 2nd Defendant was later, on the 20th October 2020, withdrawn from the Court. Since the 1st Defendant's whereabouts could not be established, despite there being a summons be issued by way of publication, and given that he did not file his WSD, the case had to proceed *ex-parte* against him.

On the 10th of December 2020, following a prayer by the learned counsel for the Plaintiff, this Court issued an order that, the Plaintiff's Truck **No. T256 DHL** and Trailer **No.T579 DHM**, together with its Cargo (if any), be discharged from the Port's Police Post, where it was withheld. The parties were ordered to proceed to mediation, but the mediation process was unsuccessful.

Consequently, on the 31st May 2021, a final pre-trial conference was convened and the following were agreed issues which called for the attention of this Court:

1. Whether the Defendants were legally authorised by the Plaintiff to use the Plaintiff's Truck with registration front Plate No. T256 DHL and Trailer No.T579 DHM.

2. If the 1st issue is in the negative, whether the use of the Plaintiff's Truck Plate No. T256 DHL and Trailer No.T579 DHM amounted to conversion.
3. Whether the Plaintiff's order to detain the 2nd Defendant's cargo was lawful.
4. To what reliefs are the parties entitled.

On the 18th day of October 2021, the Plaintiff's case commenced. The Plaintiff's only witness was Mr. Yassin Salehe Hassan, who testified as **Pw-1** and had earlier filed his witness statement in accordance with the applicable rules of this Court. In his statement, which he tendered and was received as his testimony in chief, **Pw-1** stated that, the Plaintiff engages in the business of logistics and transportation and operates a fleet of trucks for hire within the City of Dar-es-Salaam.

According to **Pw-1**, on average use per day, the Plaintiff's trucks operations' single trip for hire within the City of Dar-es-Salaam is charged between **USD 200/-** and **USD 400**. He submitted in Court a Tax invoice and delivery Notes evidencing his assertion as exhibits and these were admitted as **Exh.P3 (a)** and **(b)**.

Pw-1 further testified that, it is the custom, practice and usage in the business of truck hiring that, when one is

hiring a truck, he must place an order for that service by notifying the officials of the company owning the truck, and, that, upon acceptance and making the requisite payments, the company would release the truck(s) for use.

Pw-1 did confirm the assertions that, the truck with registration front **Plate No. T. 256 DHL** and Trailer **No.T.579 DHM** belonged to the Plaintiff. He tendered in Court the vehicle's registration cards which were admitted into evidence as **Exh.P.1**. He told this Court that, on the **11th April 2020**, the Plaintiff's Truck, with registration **No. T256 DHL** and Trailer **No.T579 DHM** went missing.

Pw-1 testified that, on that particular day, there was no record that it was hired. However, upon reporting the incident to the Police and, upon continued search, it dawned on the Plaintiff that the missing truck had been abandoned at the Dar-es-Salaam Port Area and, was under the custody of the Port's Police.

Pw-1 told this Court that, upon further inquiry, the Plaintiff was able to retrieve copies of export order and certificate from *Tanzania Internal Container Transport Services* (TICTS), as well as receipts showing the name of the 1st Defendant, who was the driver and the 2nd Defendant, who was the cargo owner. The TICTS documents were received as **Exh.P.2.**

Pw-1 stated further that, in view of Exh.P2, it was evident to the Plaintiff, that, on the 10th April 2020, the 2nd Defendant had colluded with the 1st Defendant, the driver employed by the Plaintiff, to use the Plaintiff's Truck, with registration **No. T256 DHL** and Trailer **No.T579 DHM** to ferry the 2nd Defendant's container load of cotton seed husks. According to him, such a business deal was never disclosed to the Plaintiff and the Plaintiff never had any agreement with the 2nd Defendant for the use of the Plaintiff's Truck, with registration **No. T256 DHL** and its Trailer **No.T579 DHM**.

Pw-1 testified that, since the truck was under the custody of the Port Police Station and loaded with the 2nd Defendant's cargo, the Plaintiff suffered loss of deprived income worth **USD 200** per trip, as well as loss of use of the said truck quantified at **USD 400** per day for the total of 236 days, which are the number of days the truck remained at the Police, together with liability arising as charges and fees accruing from the abandoned truck.

It was a further testimony of **Pw-1** that, the Plaintiff issued a demand note to the 2nd Defendant, demanding costs of each trip lost per day, storage charges, accrued amount for none use of the truck due to its retention at the Port's Police amounting to **USD 200** per trip per day, plus **USD 600** per day for loss of income of **TZS**

50,000,000/- as of 5th May 2020. **Pw-1** tendered the demand notice which was admitted as **Exh.P.4.**

Upon being cross-examined, **Pw-1** told this Court that, as the Plaintiff's transport officer (TO), he was in-charge of all trucks. He admitted to know the 1st Defendant as an employee of the Plaintiff and, that, currently, the 1st Defendant is nowhere to be traced, and the Plaintiff reported him to the Police.

Pw-1 told this Court that, the Plaintiff maintains a procedure of hiring its trucks which includes, knowing the type of the cargo, the place where it was, the route involved and the related safety issues, before agreeing on the payments. He emphatically maintained that, all customers intending to hire a truck have to engage with authorised personnel and, in the Plaintiff's office. He stated as well that, the 1st Defendant was never authorised to enter into agreements with outsiders and had no mandate of even knowing what the car he drove was contracted for.

As such, **Pw-1** maintained that, the 1st and 2nd Defendants breached the Plaintiff Company's procedures of hiring trucks since all businesses are conclude not outside but in the Plaintiff's office. Concerning who the 1st Defendant was, **Pw-1** denied that, the 1st Defendant was ever an agent of the Plaintiff but, that; he was a mere employee (driver). He emphasized that; the 2nd Defendant

ought to have come to the Plaintiff's office to hire the services.

Pw-1 further stated that, the Plaintiff's claims are based on the fact that the Plaintiff found the truck working for the 2nd Defendant and at the port area while the Plaintiff had not authorised its use.

During re-examination, **Pw-1** told this Court that, the Plaintiff brought the case before this Court because the Defendants flouted the procedures of hiring the truck and that, the whole time the truck remained at the port was almost 236 days. He re-emphasized that, the Plaintiff had never worked with the 2nd Defendant. He told the Court that, having reported that the car was missing and, when they found it detained at the Police, the Plaintiff had no mandate over the Police matter, they needed an order of the Court to release the truck, and that order was obtained sometime in December 2020.

In short, that was the Plaintiff's case. At the closure of the Plaintiff's case, the Defendants' case opened. As I stated earlier, it was only the 2nd Defendant who entered appearance as the case against the 1st Defendant proceeded *ex-parte*. At the hearing, the 2nd Defendant brought two witnesses, one **Ms Rehema Kessy** and **Mr Jie Qi,** who testified as **Dw-1** and **Dw-2** respectively.

Both have filed Witness Statements in accordance with the requirements of Rules of this Court.

In her witness statement, which was tendered and received in Court, **Dw-1** testified that, she used to work for the 2nd Defendant as an Operation's officer. She told this Court that, on 10th April 2020 she supervise the loading of cargo in a 40 feet **Container No.TLLU4571658** for export to China. She told the Court that the assignment could not be completed due to some errors and, that, on the 11th April 2020 a new loading invoice **No.TLLU4571658** ready for shipping to China.

Dw-1 told this Court that, since their truck was away in Shinyanga, she was approached by the 1st Defendant who was driving the Plaintiff's Truck, with registration **No. T256 DHL** and its Trailer **No.T579 DHM**. She told this Court that, the 1st Defendant offered to transport the container from Kurasini to the Port, for **TZS 200,000/=.** According to **Dw-1**, the 40 feet container was stuffed with cotton husks worth **TZS 6,660,000.**

Dw-1 told the Court that, on the 12th April 2020, she was informed via a phone call that, the particular container destined for export to China was detained at the Port Police Post for investigation on the Orders of the Plaintiff and, that, the 1st Defendant was at large. She told the Court that, when she tried to engage with the Plaintiff the latter

demanded to be paid **TZS 50,000,000** if the Cargo was to be released for export. When the 2nd Defendant made an offer to pay **TZS 4,000,000/-** that offer was declined and the **Container No.TLLU4571658** was not released leading to failure to export it and total loss of its cargo's value. She stated that it is the Plaintiff who should instead pay the 2nd Defendant for the losses suffered.

On cross-examination, **Dw-1** told this Court that, ordinarily there are drivers at the ICD's who are frequently engaged by customers to ferry their cargo and that, the 1st Defendant was one of them who agreed to ferry the 2nd Defendant's container to the Port for **TZS 200,000/=** as his pay.

Dw-1 stated further that, their agreement was oral and payments were to be made after submission of Port interchange documents. She maintained that, the Police detained the truck and the cargo at the Plaintiffs' instruction. During re-examination, **Dw-1** maintained that, the contract she entered with the 1st Defendant was an oral contract.

For his part, **Dw-2** testified and told this Court that, he is the Managing Director of the Defendant. He told this Court that, on the 10th day of April 2020 the Defendant hired a truck with registration **No.T.256 DHL** and its trailer **No. T.579 DHM** through its driver, the 1st

Defendant. The hiring was for the purposes of transporting a 40 feet **Container No.TLLU4571658** from Kurasini Temeke Dar-es-Salaam to the Dar Port for export to China.

According to **Dw-2**, the parties agreed that the price for the service was **TZS 200,000/=.** He stated that, if he would have failed to export the container, the Defendant was to record a loss of **USD 30,724. Dw-2** stated further that, the cotton husks he was exporting were worth **TZS 6,660,000/=. Dw-2** went on to tell this Court that, on the 11th April 2020, he received information while in Shinyanga region that, the **Container No.TLLU4571658** was being held at the Port Police Station for investigation on the Plaintiff's orders. He tried to contact the Plaintiff with intent to resolve the claim but all efforts proved futile and, in the end, the **Container No.TLLU4571658** was not exported, hence causing loss to the Defendant, including damage to the product, port charges as well as loss of credibility to the Defendant's clients.

During cross-examination, **Dw-2** did acknowledge that, he ought to have known who was transporting his container. He also stated that, he was unacquainted with the driver (the 1st Defendant). He further told this Court that, the Defendant does not maintain a hired driver to transport its containers. He however stated that, the Defendant does authorise its employees to enter into

binding agreements for and on behalf of the Company although not in every transaction.

Dw-2 told this that, when transportation is sourced from various transporters the Defendant issues them with an invoice and effect payments. **Dw-2** told this Court, therefore, that, it was he 2nd Defendant who hired the truck through one of its employee and he does not know the owner and did not know how it was hired. **Dw-2** denied to have been negligent for not knowing the driver from who the truck was hired but he understands that, as a general practice, many transporters do shuttle form the ICDs to the Port.

He lamented, however, that, it was the Plaintiff who was responsible for detaining the truck which the Defendant had hired and, that, the Plaintiff claimed a huge amount from the Defendant. On being re-examined, **Dw-2** told this Court that, it was **Dw-1** who hired the truck as an operations' in-charge and that, the value of the cargo was about **USD 7000**. He asked the Court that, his Company be paid the losses it has suffered. He told the Court that the respective container was released and, that, the Defendant paid demurrage charges, an amount he cannot remember. So far, that was the Defendant's case.

Upon closure of the Defence case, the parties prayed to file closing submissions. I will consider those

submissions alongside the testimonies of the witnesses who testified for each of the parties, as I analyse their testimonies and the available evidence before rendering my verdict. From the facts of this case, the nature of the Plaintiff's major complaint is conversion and unauthorised use of his Motor Vehicle.

Having defined the nature of the complaint at hand, let us examine whether the facts and the evidence establishes it or not. In this case four issues have been raised, which I will address shortly here under, taking into account the evidence and the submissions made by the parties. The first issue is:

> Whether the Defendants were legally authorised by the Plaintiff to use the Plaintiff's Truck with registration front Plate No. T256 DHL and Trailer No.T579 DHM.

Essentially, there is no doubt that the truck with registration front **Plate** No. **T. 256 DHL** and Trailer **No.T.579 DHM** are the properties of the Plaintiff. **Exh.P.1.** According to the testimony of **Pw-1**, the truck and the trailer in question went missing on the **11th April 2020**. **Pw-1** told this Court that, the truck and its trailer were driven by the 1st Defendant, who is/was an employee of the Plaintiff.

It was also the testimony of **Pw-1** that, the truck was detained at the Police Port Station following the reporting of its missing by the Plaintiff, and that, it was found to be carrying a cargo belonging to the 2nd Defendant. The testimony of **Pw-1** was categorical that, that, on the material date when the truck went missing, the Plaintiff had no deal, whatsoever, with the 2nd Defendant and, had not, in any manner whatsoever possible, authorised the 1st Defendant to enter into a contract of carriage with the 2nd Defendant.

The evidence of **Dw-1** and **Dw-2** all point to the fact that, they engaged the 1st Defendant to provide them with the truck hiring service and transport their 40 feet container from Kurasini area in Temeke to the Port and that, the agreement being oral was not between the 1st Defendant and the Plaintiff but the 2nd Defendant and the 1st Defendant.

On the basis of the above stated position, and since the 1st Defendant was an employee of the Plaintiff, was the 1st Defendant acting under the authority of the Plaintiff? The fact according to the testimony of **Pw-1** is that, the 1st Defendant was a mere driver employed to drive the truck.

Indeed, the driver was not and could not be regarded as the owner of the truck but was rather merely in the immediate possession of it by virtue of his employment. It

means therefore that, being not the owner of the truck and its trailer, anything to do with the hiring of the truck was not vested in the driver's authority.

The above finding is indeed supported by the testimony of **Pw-1** who also testified that the 1st Defendant being the driver was as well not authorised to enter into any agreements involving the hiring of the truck and its trailer, as all truck-hiring transactions are done at the Plaintiff's office.

Generally, much as one may argue that the driver (1st Defendant) was an agent of the Plaintiff, since he was not authorized to enter into contracts involving the hiring of the truck he was driving (as all such are matters dealt with by his employer only as per the testimony of **Pw-1**) it means that, he acted outside his mandate. Anything done without authority of the owner is contrary to basic norms of the law of agency and, hence, cannot be imputed on the Plaintiff (the Principal). As a matter of law, a contract which has been entered into by an agent who did not have the authority to do so will be invalid and non-binding on the principal.

From the above position, it follows that the 2nd Defendant was not authorised by the Plaintiff to use the latter's truck as the two had no contract whatsoever involving the Plaintiff's truck. The use by the 2nd Defendant

on the basis that he concluded a contract with the 1st Defendant, who was not authorised to enter into such a contract, amounted to an unauthorised use.

It follows, therefore, that, the first issue is responded to in the negative. The Defendants had no authority to use the truck and its trailer in the execution of a contract which was unknown to the Plaintiff and unapproved by Plaintiff.

The second issue was dependent on the 1st issue. It was to the effect that:

> If the 1st issue is in the negative, whether the use of the Plaintiff's Truck Plate No. T256 DHL and Trailer No.T579 DHM amounted to conversion.

As I stated herein above, the nature of this case is the tort of conversion. From a general perspective of the case at hand, the ultimate issue, therefore, is whether, on the basis of the testimony of **Pw-1**, there was sufficient evidence on the facts and, the available materials at hand, to conclude that, the tort of conversion had been established or not. Before we delve on that, it will be more appropriate, perhaps, to define what the Courts; from a general perspective, have so far stated regarding what the tort of conversion is all about.

In the Australian case of **Penfolds Wine Pty Ltd vs. Elliott** (1946) 74 CLR 204, the following were stated

by the High Court. In particular, Latham CJ defined conversion as referring to:

> "the unauthorised assumption of the powers of the true owner."

On the other hand, Dixon J was of the view that:

> "the essence of conversion is a dealing with a chattel in a manner repugnant to the immediate right of possession of the person who has the property or special property in the chattel".

In yet another Australian case of **Banks vs. Ferrari & Ors** [2000] NSWSC 874, Dowd J., held that:

> "conversion essentially consists of a positive wrongly act of dealing with goods in a manner which is inconsistent with the rights of the owner. This must be coupled with the intention of denying the owner's rights or asserting a right that is inconsistent with them".

In the English case of **Fouldes v Willoughby** (1841) 151 ER 1153, however, the Court was of the view that:

> "a mere wrongful asportation of a chattel does not amount to a conversion, unless the taking or detention of the chattel is with intent to convert it to the taker's own use, or that of some third person, or unless the act done has the effect, either of destroying or changing the quality of the chattel".

Perhaps a better understanding of the law regarding conversion, may be observed form what was succinctly and comprehensively set out by McIntosh JA in the case of **The Commissioner of Police and the Attorney General vs. Vassell Lowe**, [2012] JMCA Civ 55.

In that case, McIntosh JA, had the following to say, at paragraphs [35] – [38] of his judgment:

> "[35] ...The learned trial judge had placed reliance on the definition of conversion in the 21st edition of Salmon & Heuston's Law of Torts...
>
> 'A conversion is an act or complex series of acts of which willful [sic] interference, without lawful justification, with any chattel in a manner inconsistent

with the right of another, whereby that other is deprived of the use and possession of it.'

[36] In addressing the elements required to constitute conversion the learned authors provide a brief and useful history of the tort, stating, inter alia, that, there are three distinct ways by which one man may deprive another of his property and so be guilty of a conversion, namely: '(1) by wrongly taking it; (2) by wrongly detaining it and (3) by wrongly disposing of it'. Historically, the authors state the term conversion was originally limited to the third mode as merely to take another's goods, however wrongful, was not to convert them. However, **in its modern sense, the tort includes instances of all three modes and not of one mode only.** The authors point out that two elements combine to constitute willful interference: (1) dealing with the chattel in a manner inconsistent with the right of the person entitled to it

and (2) an intention in so doing to deny that person's right or to assert a right which is in fact inconsistent with such right (see *Caxton Publishing Co v Sutherland Publishing Co* [1939] AC 178, 189 and *Penfolds Wines Pty Ltd v Elliott* (1946) 74 CLR 204, 229) ...

[37] The courts have determined that in the absence of willful and wrongful interference there is no conversion even if by the negligence of the defendant the chattel is lost or destroyed (see *Ashby v Tolhurst* [1937] 2 KB 242). Further, the authorities show that **every person is guilty of a conversion who without lawful justification takes a chattel out of the possession of anyone else with the intention of exercising a permanent or temporary dominion over it because the owner is entitled to use it at all time** (see *Fouldes v Willoughby*)...But, a mere taking unaccompanied by

an intention to exercise dominion is no conversion. Further, the detention of a chattel amounts to conversion only when it is adverse to the owner or other person entitled to possession – that is, the defendant must have shown an intention to keep the thing in defiance of the owner or person entitled to possession. The usual way of proving that a detention is adverse within the meaning of this rule is to show that the party entitled demanded the delivery of the chattel and the defendant refused or neglected to comply with the demand...

[39] ...it is evident that **the key to the establishment of the tort is wrongful interference or unjustifiable interference with the chattel so as to question or deny the owner's title to it** (see *Kuwait Airways v Iraqui Airways* [2002] 2 AC 883)..." [Emphasis added].

From the above long excerpt, the following questions need to be responded to in relation to the case at hand. The first question is: *whether it can be said that the 1st and 2nd Defendants took the chattel (truck and its trailer belonging to the Plaintiff) out of the possession of the Plaintiff without lawful justification and with the intention of exercising a permanent or temporary dominion over while its owner (the Plaintiff) was entitled to use it at all time.*

The response to the first question above is not farfetched as it is responded to by the first issue which was held to be in the negative. The 1st and 2nd Defendant had no justification whatsoever to use the truck for errands which were exclusively unknown and unauthorised by the Plaintiff. Even if it was not a permanent taking or deprivation, the temporary dispossession of it from the Plaintiff's use sufficiently establishes the first requirement in proving the tort of conversion. It was an unjustified interference to a chattel for which a claim may be laid since its owner (the Plaintiff) was entitled to use it at all time.

The second question is: *whether the 1st and 2nd Defendants dealt with the chattel (the truck and its trailer) in a manner inconsistent with the right of the Plaintiff who*

was entitled to its use at all times. This question is also affirmatively established.

According to the testimony of **Pw-1**, at no material time was there any contract of carriage (haulage) between the 2nd Defendant and the Plaintiff, a fact which was also supported by the 2nd Defendant in his testimony during cross-examination. The agreement which **Dw-1** and **Dw-2** claimed to have concluded with the 1st Defendant was, as I stated earlier, void *ab initio* since, as **Pw-1** stated in his testimony, the 1st Defendant had no authority to enter into such a contract.

It follows, therefore, that, the use of the truck and its trailer, was inconsistent with the Plaintiff's right to its use at all times. **Pw-1** did testify that, on the 10th of April 2020, the truck went missing at the time when the Plaintiff wanted to have it used for his business. Its non-availability was inconsistent to the Plaintiff's right to use it at all times as he wishes.

It means, as well, therefore, that, the 1st and 2nd Defendants had intentionally, even though temporarily, asserted their dominion over the truck and its trailer, a fact which was inconsistent with the Plaintiff's rights over the truck. From the foregoing discussion, there is no doubt that the elements proving the wrongful act of conversion are fully established and, the second issue which was agreed

upon in this case, i.e., *"If the 1st issue is in the negative, whether the use of the Plaintiff's Truck Plate No. T256 DHL and Trailer No.T579 DHM amounted to conversion",* is responded to in the affirmative.

The third issue is: ***Whether the Plaintiff's order to detain the 2nd Defendant's cargo was lawful.***

Essentially, if proved in the negative, the above stated issue No. 3 is meant to respond to the claims raised by the 2nd Defendant in the counter-claim. From the testimony of both **Dw-1** and **Dw-2,** it is stated that, the Container **No.TLLU4571658** (and its cargo) was held at the Port Police Station for investigation on the Plaintiff's orders. **Pw-1**, however, denied that the Plaintiff had ordered the Police to detain the cargo. As a matter of legal principle, he who alleges must prove.

It is unfortunate, however, that, although the 2nd Defendant has maintained an assertion in its pleadings, which assertion was also reiterated in the testimonies of **Dw-1** and **Dw-2**, the Container **No.TLLU4571658** and its cargo was held at the Port Police Station for investigation on the Plaintiff's orders, no evidence whatsoever was adduced to back the allegations. In any case, the assertion was unsubstantiated hearsay which has no value in evidence.

Be that as it may, what **Pw-1** told the Court was that, the truck and its trailer were detained at the Police

Station after the Plaintiff reported to the Police when it went missing on the 10th April 2020. **Pw-1** found out later informed that it had been detained at the Port Police Station and was in the custody of the Police, until when a release order by the Court was issued.

In my view, the 2nd Defendant has nothing to claim from the Plaintiff. If any loss was registered on the part of the 2nd Defendant, that is something of his own making as he preferred to operate clandestinely by engaging the 1st Defendant in total disregard of the procedures which ought to have been followed had the 2nd Defendant contacted the Plaintiff.

Moreover, and, according to **Pw-1**, all contacts of the Plaintiff could be readily obtained on the side of the truck-door or the 1st Defendant could as well take the 2nd Defendant to the Plaintiff's office. The 2nd Defendant should have been wary of taking shot-cuts since the old adage which says "*cheap is expensive*" always comes true. The third issue is therefore in favour of the Plaintiff since the 2nd Defendant has not been able to prove that the Plaintiff did issue orders to the Police.

I even venture to state, further, that, even if the Police detained the vehicle and its cargo at the orders of the Plaintiff, a fact which I have ruled out since the Plaintiff had no such authority to issue orders to the Police, still the

2nd Defendant would have failed in its bid to lay blames and claims on the Plaintiff. In the case of **Saranji vs. Attorney-General** [1970] E.A347, for instance, the High Court of Uganda dealt with a somewhat similar case.

The brief facts of the case were that, a car dealer bought a car innocently and for value and subsequently sold it to the plaintiff. However, the respective car had been stolen and had a forged registration card. The police took the car from the plaintiff and returned it to its true owner without securing a magistrate's order to return stolen goods. The plaintiff sued the Attorney-General for damages for wrongful detention or conversion.

In dealing with the matter, the Court was of the view that:

> "There were no criminal proceedings in this case. There is no evidence as to why there were no criminal proceedings. And, in any event.... There is no ground for holding that the police were wrongdoers for any other reason. The police are charged with the duty of prosecuting criminals and recovering stolen property. The car was presumably reported to the Uganda Police as having been stolen. The plaintiff has said that

> the police officer who took away the car told him that the car had been stolen. **The car was taken away by the police for the purposes of investigation in the course of their duties.**" [Emphasis added].

In my view, a similar finding is warranted in this case at hand, regarding how the Police got involved in detaining the respective truck and its trailer and so to speak the cargo in the container which was being transported by the said truck. If the 2nd Defendant was on the right-path he ought to have filed a matter in Court, be it an application or what is it, and procedurally seek for the release of the cargo. Unfortunately, that was not done, and, being on the erring side, the 2nd Defendant cannot heap blames on or even raise any claim against the Plaintiff.

Indeed, as correctly submitted by the learned counsel for the Plaintiff, the Latin doctrine of '***Ex turpi causa non oritur actio***' which simply means that, "from a dishonorable cause an action does not arise", will apply on the 2nd Defendant's counterclaim.

The final issue is:

> To what reliefs are the parties entitled.

Essentially, "damages" is the primary remedy for the tort of conversion. Taylor and Owen JJ **in Butler vs. Egg Pulp Marketing Board** [1966] ALR 1025 stated that:

> "the general principle upon which compensatory damages are assessed, whether in actions of contract or of tort... is that the injured party should receive compensation in a sum which, so far as money can do so, will put him in the same position as he would have been... [had] the tort... not been committed... this principle is as much applicable to actions of conversion as it is to the case of other actionable wrongs".

In this case, the Plaintiff has claimed from the 1st and 2nd Defendants, jointly and severally, payment of damages (both specific and general). In particular, the Plaintiff has claimed payment of specific damages in form of loss of use as follows:

(a) Payment of a sum of USD 200/ per trip for loading and offloading the cargo.

(b) Payment of USD 36,400.00 for non-use of the truck from 10th April 2020 to date.

As a matter of law, it is trite that specific damages must be strictly pleaded and proved. The case of **Zuberi Augustino Mugabe vs. Anicet Mugabe** [1992] T.L.R. 137 and **Stanbic Bank Tanzania Ltd vs. Abercrombie & Kente (T) Limited**, Civil Appeal No.21 of 2001 (CAT) (unreported), laid emphasis on that fact.

Moreover, in the **Xiubao Cai and Maxinsure (T) Ltd vs. Mohamed Said Kiaratu**, Civil Appeal No.87 of 2020, this Court, exploring what does special damages entail, stated, and quoting from other persuasive and authoritative sources, that:

> "Special damages are such a loss as will not be presumed by law. They are special expenses incurred or monies actually lost. For example, the expenses which a plaintiff or a party has actually incurred up to the date of the hearing are all styled as special damages; for instance, in personal injury cases, expenses for medical treatment, transportation to and from hospital or treatment centre, etc...."

Turning to the case at hand, it is clear from the Plaint that, the Plaintiff did plead for payment of such damages. In an endeavour to justify that the Plaintiff Company charges an average amount of about **USD 200** and **USD 400** per trip whenever its vehicles are hired, **Pw-1** tendered in Court, **Exh.P3 (a) and (b)**.

Essentially, even though **Exh.P3(a) and (b)** were not directly related to the case at hand, the same were a demonstration of the rates for which the Plaintiff charges all its customers, and, for that matter, this Court finds that these **Exh.P.3(a) and (b)** are relevant and admissible.

I am satisfied therefore that, the claim for specific loss (damages) are justified. However, the same can only be paid up to the date where the truck and its trailer were released by Court order, i.e., from 10th April 2020 to 10th of December 2020 (240 days), which will amount to (USD 200x 240 days= **USD 48,000/=.**

As regards the claim for general damages, the Plaintiff has asked for **TZS 50,000,000**. Ordinarily, it is not for the Plaintiff to set out the amount payable as general damages. The assessment is left to the Court in exercise of its discretion.

In my assessment and considered opinion, however, I see no reason as to why the Plaintiff should be paid that sum given that the losses for non-use of the Truck in question are already subsumed in the claim for specific loss in the form of specific damages. I decline granting that prayer.

On the other hand, I decline as well to grant the Plaintiff's claim for accrued port charges because the same

have not been substantiated. In the upshot, the judgement is granted in favour of the Plaintiff as follows:

1. That, the Defendants are to jointly and severally pay the Plaintiff USD 48,000/- as special damages for the losses suffered due to the non-use of the Plaintiff's Truck for days 240.
2. That, the Defendants are to pay interests on the above sum at a rate of 12% from the 10th April 2020 to 10th December 2020.
3. The Defendants are to pay a further 7% p.a, interest on the decretal sum from the date of this judgement to the date of full satisfaction of the decree.
4. Defendants are to pay costs of this suit.
5. The counterclaim is hereby dismissed.

It is so ordered

DATED at DAR-ES-SALAAM, this 23RD DAY OF FEBRUARY 2022

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HON. DEO JOHN NANGELA
JUDGE
Right of Appeal Explained