

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI
ON THE 28TH DAY OF JULY, 2023, BEFORE HER LADYSHIP AFIA N. ADU-
AMANKWA (MRS.) J.**

SUIT NO. E12/63/20

EMMANUEL K. GYAMFI

PLAINTIFF

VRS.

**1. SHUGGA a.k.a LIN ZHUO LEI
2. ATTORNEY-GENERAL DEPT.**

**1ST DEFENDANT
2ND DEFENDANT**

JUDGMENT

On 8th July 2020, the plaintiff issued out of the registry of this court, a writ of summons against four defendants for the following reliefs:

- "a. An order directed at the 4th Defendant to recover Plaintiff's Excavator with registration No. 35449 (2012 Model) from 1st Defendant for the Plaintiff.
- b. Recovery of an amount of GHc5,000.00 a day from December 2019 for the number of days the machine has been working.
- c. Cost".

Per the accompanying statement of claim, the plaintiff described the 1st defendant, Shugga, as a Chinese national who worked in Ghana. The 2nd defendant, the Inspector General of Police, was the head of the Police Service in Ghana, whilst the 3rd defendant, the Attorney-General Department, was the principal legal advisor to the Government of the Republic of Ghana. The 4th defendant was the District Commander of Wassa Akropong. The plaintiff averred that on 3rd July 2017, one Lan, a Chinese national in Wassa Akropong and the

director of Hansol Mining Limited, represented to him of the company's interest in selling its excavator machine, which he purchased. The seller executed a deed of transfer for him after handing over the vehicle's original documents to him. After a fortnight of buying it, he discovered the machine had been removed from its location. Upon a search, he found the machine at a mining site in the possession of the 1st defendant. He reported to the 4th defendant of the found machine and kept the machine which had developed a fault with the 4th defendant after removing some parts from the machine. When he returned with a mechanic to repair the vehicle, he realized that the 2nd defendant's men had released the vehicle to the 1st defendant. The plaintiff claimed that the machine had been in the possession of the 1st defendant for six months since December 2019, and he had been working with it.

In his defence, the 1st defendant averred that the plaintiff was the personal driver of his brother, Lin Jiang Song, who left Ghana for China in 2017. His brother was a majority shareholder and director of the now defunct Hansol Mining Ltd. Following the government's policy to clamp down on small-scale mining involving foreigners and which activity Hansol Mining Ltd was engaged, the directors and shareholders ceased the company's activities and decided to share the company's mining equipment amongst themselves. His brother became vested with the sole ownership of the disputed excavator. Before the sharing of the assets, his brother was indebted to him. When his brother was due to leave Ghana, he handed over the excavator to him for his use to defray his debt.

The Attorney-General acting per the chief state attorney, entered conditional appearance on behalf of the 2nd, 3rd and 4th defendants. Subsequently, she filed a joint statement of defence on their behalf. The defendants contended that the plaintiff's decision to join the police to the action was in bad taste, given that the proper person to sue on behalf of the police was the Attorney-General and not the police nor the Attorney-General's Department. It was the defendants' case

that on 25th April 2020, the plaintiff, in the company of two military men, reported to the 4th defendant that his excavator, which he had parked at Wassa Adesu, had been stolen and was in the possession of the 1st defendant who was working with it at the site. To ensure that the excavator was not moved from its original location, the police took custody of the control board and two other parts. The police took statements from both the plaintiff and the 1st defendant. During their investigations, the plaintiff stated that he bought the excavator from his boss, who was resident in China. The 1st defendant also claimed that the owner of the machine, Ling Jiang Song, borrowed GHc200,000.00 from him and gave him the excavator machine to work with on 13th September 2018 to defray his indebtedness to him. However, the plaintiff failed to produce the Chinese man to confirm that he sold the excavator to him. Neither did the 1st defendant produce Ling Jiang Song to confirm his assertion. As both parties could not produce the owner of the machine, the police told the parties that the facts could not support the plaintiff's claim of stealing and as such, the docket was closed as civil on 11th May 2020. The plaintiff was advised to seek civil redress. As the 1st defendant was in possession of the machine when the report was made to the police, in the absence of the real owner, the parts of the machine removed by the police were given back to the 1st defendant.

On 3rd November 2020, during the consideration of the application for directions, the court suo moto unsuited the 2nd and 4th defendants, given the role played by the Attorney-General as the principal legal advisor to the Government of Ghana. The court ordered the plaintiff to amend the writ to have the Attorney-General as the 2nd defendant. The plaintiff complied with the court's order and amended the writ on 18th January 2021. It is to be noted that the 2nd defendant is the "Attorney-General Department" and not the "Attorney-General". The misnaming or the improper identification of the 2nd defendant as "Attorney-General Department" is a mere misnomer and not fatal to the action and could be cured by an amendment. The 2nd defendant never brought any action challenging the name

used on the writ, which I have held to be a misnomer. In such cases, the court has the power to amend the record to reflect the correct name. See **Order 16 R. 5(3) of the High Court (Civil Procedure) Rules, 2004 (CI 47)**. The court must ensure that justice is done in cases before them and should not let mere technicalities circumvent the duty. As held in **Pearlman, (Veneers) SA (Ply) Ltd vrs. Bernhard Bartels [1954] 3 All ER 659**, per Lord Denning:

“When the substantive judgment is not being altered but only the title of the action, it is to my mind quite plain that this court has ample jurisdiction to correct any misnomer or misdescription at any time whether before or after judgment...”

In the circumstances, the 2nd defendant’s name is amended to read “Attorney-General”. It is also important to remark that following the amendment of the writ, the plaintiff did not bother to amend the accompanying statement of claim. Per his amended writ, the plaintiff’s claims against the 1st and 2nd defendants are for:

- a. An Order for the recovery of Plaintiff’s Excavator with registration No. 35449 (2012 Model) from 1st Defendant for the Plaintiff.
- b. Recovery of an amount of GHc5,000.00 a day from December 2019 for the number of days the machine has been working.
- c. Cost”.

In view of his failure to amend his statement of claim, the reliefs as endorsed on the amended writ are not exactly the same as that endorsed on the statement of claim. A writ of summons should be read together with its statement of claim to determine if it discloses any cause of action before the court. This is so because a statement of claim may, in appropriate cases, amplify or diminish the scope of the writ on which it is founded. See the case of **Opoku (No. 2) vrs. Axes Co. Ltd [2012] 2 SCGLR 1214**. Now where a claim contained in a writ of summons is not repeated in the statement of claim, the plaintiff is deemed to have elected to

abandon the claim. See **Antwi vs. Amponsah and Another [1964] GLR 531**. The first relief, as endorsed in the statement of claim, is

“An order directed at the 4th Defendant to recover Plaintiff's Excavator with registration No. 35449 (2012 Model) from 1st Defendant for the Plaintiff”.

Essentially, this is what the plaintiff claims and not what is endorsed on the writ. After all, the reliefs which are stated in the statement of claim and on which facts have been pleaded will supersede the endorsement on the writ. See the case of **Unilever Ghana Ltd vs. Kama Health Services Ltd [2013-2014] 2 SCGLR 861 @ 884**. For this reason, it is imperative for parties to amend their statement of claim following the amendment of the reliefs endorsed on the writ of summons. There is no 4th defendant through whom the court can make orders to recover the plaintiff's excavator. In essence, the plaintiff has no cause of action regarding the first relief. Fortunately for the plaintiff, the rest of the reliefs endorsed on the amended writ of summons remained the same as that endorsed on the statement of claim.

The following issues were adopted for resolution:

- i. Whether or not it was the plaintiff who lodged the parts of the disputed vehicle with the police.
- ii. Whether the excavator in issue was lawfully acquired by the plaintiff.
- iii. Whether or not the plaintiff is entitled to his reliefs sought.
- iv. Any other relief or reliefs this Honourable Court may deem fit.

BURDEN OF PROOF

The rule of evidence is that a party who bears the burden of proof or burden of persuasion in a case must produce relevant evidence to convince the trier of facts of the merits of his case. In a civil action, the burden of persuasion may require a party to establish the existence or non-existence of a fact by a preponderance of the probabilities. See **section 10(2) of the Evidence Act, 1975**,

NRCD 323. This burden would require a party to call material witnesses or lead cogent evidence to establish his case. Thus, in the case of **Ackah vrs. Pergah Transport Ltd. & Others [2010] SCGLR 728 at page 731**, the Supreme Court held as follows:

"It is the basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimony of the parties and material witness, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the Court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof be proved by producing sufficient evidence so that on all the evidence, a reasonable mind could conclude that the existence of a fact is more reasonable than its non-existence. This is a requirement of the law on evidence under Sections 10(1) and (2) and 11(1) and (4) of the Evidence Act, 1975 (NRCD323)"

The defendant is under no obligation to prove anything. The burden only shifts to the defence to provide sufficient evidence to tip the scales in his favour when the plaintiff leads some evidence to prove his claim on a particular issue. If the defendant succeeds in doing this, he wins; if not, he loses on that particular issue. See **Ababioh vrs. Akwasi III [1994-95] GBR 774 at 775** and **Bank of West Africa vrs. Ackun [1963] 1 GLR 176**.

MERITS

It is the plaintiff's case that the 1st defendant has wrongfully detained and used his excavator. At common law, two causes of action are available to a plaintiff whose chattel has been misappropriated by another. They are conversion and detinue. Conversion is an act of deliberate dealing with a chattel in a manner

which is not consistent with another's right to possession or right to possess it. See **Ada Co-operative Food Farmers Union Ltd. vrs. Abodei and Others [1982-83] GLR 1144**. Conversion is defined according to **Clerk and Lindsell on Tort (16th ed)** as:

"It is conversion when a person entitled to the possession of a chattel is permanently deprived of that possession and the chattel is converted to the use of someone else. Here, the wrong is not merely an interference with the plaintiff's possession or interest in his chattels but also an injury to his right or title".

An action in detinue lay at the suit of the plaintiff having the right to immediate possession of a chattel for the wrongful detention of his chattel by the defendant, evidenced by the defendant's refusal to deliver it up on demand and the redress claimed was the return of the chattel or payment of its value together with damages for its detention. See **Standard Chartered Bank (Ghana) vrs. Nelson [1999-2000] GLR 366**. Thus, generally, whenever conversion lies, detinue will also be available. There is, therefore, a thin line between the action for conversion and detinue. The difference lies in the fact that in detinue, even where the defendant no longer has the goods in his possession at the time of the demand, he is liable to the plaintiff unless he can show the loss was accidental. In the area of remedies, detinue differs from conversion. In conversion, the value of the goods is assessed at the time of the conversion, but in detinue, it is assessed at the time of judgment. But as stated in **Standard Chartered Bank vrs. Nelson, supra**:

"But whenever, as in the present case, chattels belonging to one person are appropriated to the use of another, the proper action is in conversion".

As the plaintiff seeks the recovery of GHc5000.00 daily from December 2019 for the number of days the 1st defendant had worked with the machine, the plaintiff's action lies in conversion. In conversion, the plaintiff must have actual possession or a right to immediate possession at the time of interference. According to Kofi Kumado in his book, **"Introduction to the Law of Torts in Ghana", at page 74**:

“Thus, although the tort of conversion protects title, and although from the point of view of the defendant, his action can only be challenged, if it is inconsistent with ownership or the plaintiff’s title, the interest that the plaintiff must prove to succeed is short of actual ownership”.

There is a dispute regarding the ownership of the excavator. While the plaintiff claims to own it, the 1st defendant contends it belongs to his brother, Lin Jiang Song. A resolution of the ownership of the excavator will determine the success of the plaintiff’s claim. The plaintiff testified that he was a businessman. On 3rd July 2017, one Lan (*Plaintiff corrected it to read Lam. He explained that it was a typographical mistake*), a Chinese national who worked at Wassa Akropong as the director of Hansol Mining Limited, represented to him that the company was selling its excavator machine. He agreed to purchase the machine and so negotiated with the said Lam and purchased it. The Volvo EC 290 BLC Excavator machine was an unregistered vehicle with registration No. 35449 (2012 Model). After paying for the machine, a deed of transfer was executed by Hansol Mining Limited, represented by him and Lam. After the execution of the deed of transfer, the original documents to the vehicle were handed over to him. When he purchased the vehicle, it was in good condition and was operating to full capacity. He rented it out to some hirers. After using the machine for some years, he discovered that it had been taken away from its location. Upon a search, he found the machine at a mining site at Wassa Akropong in the possession of the 1st defendant. He reported to the Wassa Akropong police and produced his documents covering the vehicle. He caused the arrest of the vehicle, removed some important parts that could make it function and lodged them with the Wassa Akropong police. According to the plaintiff, the police instructed him to go for the machine, but it had developed fault through usage by the 1st defendant, and that explained why he took off some parts and deposited them with the police. He told the police he would look for a repairer to repair the vehicle. When he returned a week later with a mechanic, he found out that the

police had released the parts to the 1st defendant, who had repaired the vehicle and was using it.

The 1st defendant, Lin Zhuo Lei, a.k.a. Shugga, testified that he lived at Wassa Akropong, where he plied his trade as a mechanical engineer. He knew the plaintiff, who used to be the personal driver of his brother, Lin Jiang Song, who had since 2017 left Ghana for good. The disputed excavator had been under his caretaker ship since Lin Jiang Song left Ghana. He denied that the excavator in dispute had been sold to the plaintiff by Hansol Mining Limited as it became the property of Lin Jiang Song when the company became defunct. He explained that whilst in Ghana, Lin Jiang Song was one of the shareholders and directors of the now defunct Hansol Mining Ltd., which had its operational office at Asankragua. Other shareholders were Jiang Ning An and Su, now working in Togo. When there was a clampdown on small-scale mining activities by the government of Ghana, and into which said business was Hansol Mining Ltd, her business collapsed. On the occurrence of that event and before the shareholders could leave Ghana for good, they shared amongst themselves the mining equipment and accessories acquired by the company prior in time. One such piece of equipment was the excavator in dispute. When the equipment and accessories were shared, his brother Lin Jiang Song became the absolute and sole owner of the excavator in dispute. The said excavator had been imported into Ghana in the name of Hansol Mining Ltd. The 1st defendant further testified that whilst in the business of Hansol Mining Ltd, Lin Jiang Song became indebted to him to the tune of GH¢200,000.00 being monies he had on various occasions borrowed from him. Their Chinese brother Xiong Meng Jun, who was still in Ghana, was much aware of the indebtedness of Lin Jiang Song. Before Lin Jiang Song left Ghana for good around 2018, he handed over the excavator to him to use to defray his debt in the presence of Xiong Meng Jun.

Detective Corporal Charles Appiah Tenkorang (DW1), stationed at Wassa Akropong station, testified on behalf of the 2nd defendant. He testified that on 25th April 2020, he was on duty at the District CID, Wassa Akropong, when a case of stealing an excavator machine reported by one Emmanuel Gyamfi, the plaintiff, was referred to him for investigations. The complaint of stealing was against a Chinese national, Ling Zhuo, alias Shugga, the 1st defendant. In the course of investigations, he took a statement from the plaintiff. He also invited the 1st defendant to the police station, and upon his arrival, he was arrested to assist in investigations. He took an investigation caution statement from the suspect, Shugga. On several occasions during his investigations, he requested the plaintiff to take him to the site where the excavator machine was allegedly stolen, but he failed to do that. The plaintiff also failed to take him to the site, where he later found the excavator. Given the plaintiff's refusal to take him to the site where the excavator was allegedly parked, the police never saw the machine, nor did it come into their custody. In the course of investigations, the suspect Shugga removed some parts of the excavator machine, which he brought to the station to secure the engine and ensure it was not moved from its location pending the outcome of the investigation since, according to him, the complainant had come to the site with armed men trying to take the machine away forcefully. The suspect handed over the said parts of the excavator to the police, who took custody of them pending the conclusion of investigations. Subsequently, he paraded the complainant and the suspect before the District Commander. The witness further testified that his investigations disclosed that the disputed excavator belonged to one Ling Jiang Song, a Chinese National who was not in Ghana but in China at the time. The suspect claimed the said Ling Jiang Song owed him GHc200,000.00, for which he allegedly gave the excavator to him to work to clear the debt. The plaintiff brought him a document on the transfer of ownership of the excavator to him. The document did not contain the name or signature of Ling Jiang Song, the alleged owner of the machine, but it was

somewhat in the name of Hansol Mining Company. Both parties were instructed to produce the said Ling Jiang Song, whom they claimed was the owner of the excavator machine, to assist in the investigation, but they failed to produce Ling Jiang Song. As both the complainant and the suspect could not produce the real owner of the excavator to assist the police in its investigations, the complainant was informed that the facts and evidence available to the police could not support a charge of stealing. The parts of the excavator machine the suspect had brought to the police were returned to him in view of the decision against prosecution. The complainant was accordingly advised to seek redress by a civil action in court.

The District Officer of the Wassa Akropong Police, DSP Simon W. Setorglo (DW2), testified that on 28th April 2020, Emmanuel Kwame Gyamfi, the plaintiff, came to his office with two military men and reported that in 2017, his excavator machine, which he had parked at Wassa Adesu had been stolen and was found with one Shugga, the 1st defendant, who was a Chinese man working with the excavator at the site. He directed the plaintiff and the two military men to the charge office to lodge a formal complaint, and the case was then referred to an investigator for investigation. In the course of investigations, the suspect Shugga removed some parts of the excavator machine, which he brought to the police station to secure the machine and ensure it was not moved from its location pending the outcome of the investigation since, according to the suspect, the complainant had come to the site with armed men trying to forcefully take away the machine. The suspect handed over the said parts of the excavator to the police, who took custody of them pending the conclusion of the investigations. A statement was taken from the plaintiff stating that he bought the excavator from his boss residing in China. The complainant also produced some documents he claimed were prepared and given to him by the Chinese boss. A statement was also taken from the 1st defendant in which he stated that the real owner of the excavator, Ling Jiang Song, who was in China, took GH¢ 200,000.00 from him and gave him the

said excavator machine on 13th September 2018 to work with, to defray the monies he, Ling Jiang Song had collected from him. The suspect also told police that Ling Jiang Song never told him he had sold the machine to anybody and had not given him instructions to release the machine to anyone. The suspect further told the police that Ling Jiang Song still owed him money. The witness denied ordering the complainant to go for the excavator machine. According to him, the excavator was never brought to the police station but remained at its original location. During the investigations, the complainant could not produce the Chinese man who allegedly sold the excavator to him. Similarly, the 1st defendant could not produce Ling Jiang Song to confirm his assertion either. Since the plaintiff and the 1st defendant could not produce the real owner of the excavator, he told the complainant that the facts could not support the claim of stealing. Given that decision, the docket was closed on 11th May 2020, and the complainant was accordingly advised to seek redress by civil action as there was no credible evidence to mount a criminal prosecution. Since the 1st defendant was in possession of the excavator at the time the report was made to the police, in the absence of the real owner, the parts of the machine (the control board and the two other parts) which were removed by the suspect and brought to the police, were given back to the 1st defendant.

The parties are ad idem that the excavator originally belonged to Hansol Mining Ltd. The plaintiff claims that he bought the excavator from the company acting through one of its directors, Lam. On the other hand, the 1st defendant claims that his brother acquired the vehicle following the sharing of the company's mining equipment among the shareholders. According to the plaintiff, after the sale, the company executed a deed of transfer which he tendered in evidence as exhibit "A" without any objection from the defendants. Ordinarily, the court should consider the document as long as it is in evidence. Unfortunately, the exhibit is unstamped and, therefore, inadmissible per se. Evidence is inadmissible per se when a statute or law makes it inadmissible, and its inadmissibility is not founded

upon the fact that the matter to be proved by that evidence had not been pleaded. See **In Re Okine (Decd); Dodoo & Another vrs. Okine & Others [2003-2004] SCGLR 582**. Evidence inadmissible per se includes unstamped and unregistered documents. The law makes them inadmissible even if the opposing party does not object. **Section 32(6) of the Stamp Duty Act, 2005 (Act 689)** states:

“Except as expressly provided in this section, an instrument

(a) executed in Ghana, or

(b) executed outside Ghana but relating to property situate or to any matter or thing done or to be done in Ghana, shall except in criminal proceedings, not be given in evidence or be available for any purpose unless it is stamped in accordance with the law in force at the time when it was first executed.

The deed of transfer is an instrument that requires stamping. The stamp on the exhibit appears to be that of the Commissioner of oaths' and not the stamp duty. As an unstamped document, exhibit “A” is inadmissible per se. As held in **Lizori Ltd vrs. Mrs. Evelyn Boye, School of Domestic Science & Catering [2013-2014] 2 SCGLR 889**:

“Either the document has been stamped and appropriate duty paid in accordance with the law in force at the time it was executed or it should not be admitted in evidence. There is no discretion to admit it in the first place and ask the party to pay the duty and penalty after judgment. Thus the trial court would have been perfectly justified to reject the receipts without stamping”.

Being inadmissible per se, the document should not have been admitted in evidence in the first place. Therefore, it would not be considered as part of the evidence led on record. After all, where such evidence is received in the course

of the trial (with or without objection), it is the duty of the court to reject such evidence when giving judgment, if not, the appellate court would reject it. This rule is founded on the fundamental principle that a court must arrive at its decision by relying on legal and admissible evidence and nothing less. See **Tormekpe vs. Ahiable [1975] 2 GLR 432.**

Notwithstanding the inadmissibility of the deed of transfer, the defendants alluded to this document in their evidence. DW1 and DW2 were emphatic that on the face of the document, Hansol Mining Ltd was the vendor of the excavator. Under cross-examination from the plaintiff, DW1 explained that the deed of transfer bore the company's name and not the plaintiff nor the person the plaintiff claimed to have sold the excavator to him. The 1st defendant contended that Lam was not a signatory to the deed and, therefore, could not have sold the excavator to the plaintiff. However, the plaintiff's case has been that the company acting through Lam sold the excavator to him. Thus, if the 2nd defendant has admitted that the deed of transfer was by the company, then it supports the plaintiff's case that he bought the excavator from the company, the owners of the machine through Lam. Quite apart from the deed of transfer, which the plaintiff claims was executed in his favour, he was given the original documents covering the vehicle which he tendered as exhibit "B". According to him, subsequent to the sale, the original documents of the vehicle were handed over to him, and he was given physical possession of the vehicle, which he worked with for about two years before he found that the machine had been taken away from its location. The delivery of the chattel to the plaintiff, coupled with the handing over of the documents covering the vehicle, is significant evidence to show that the company had sold the vehicle to the plaintiff or, at the very least, given him possession of it. It would be noted that the plaintiff's evidence that he had been using the excavator for some years before the 1st defendant took the machine from its location was not denied by the 1st defendant. This evidence is further bolstered by the evidence of the 1st

defendant, who under cross-examination, confirmed that he went to pick up the excavator from where it was parked. Thus, it could not be the case that Lin Jiang Song gave him the excavator when he was leaving for China in 2018, as the plaintiff already possessed it. And in the two years that the plaintiff used and rented the machine out to others, the owners of the excavator, Hansol Mining Ltd, never reported the theft of its machine to anyone, clearly indicative that the company had given him the machine. Despite the 1st defendant's claim that his brother came to own the machine when the company's assets were shared amongst the shareholders, no evidence supported this assertion. DW1 testified that investigations had disclosed that the disputed excavator belonged to Lin Jiang Song. One wonders about the investigations that led to such conclusions when the 1st defendant had not shown anything to the police to prove that Lin Jiang Song was the owner of the machine. The police had no basis to arrive at this conclusion.

Given the evidence on record that the vehicle and its documents were handed over to the plaintiff, which he rented out to others, I am more inclined to take the plaintiff's side that he is the owner of the vehicle. Apart from his bare assertion that the vehicle belongs to his brother, the 1st defendant has not been able to lead any evidence in support of his claim.

The plaintiff has testified that when he found the vehicle, it had developed a fault by virtue of the 1st defendant's usage of it. He removed some important parts of the vehicle that could make it function and lodged them with the Wassa Akropong police. The police have denied that the plaintiff lodged the parts with them. DW1 and DW2 have testified that the 1st defendant removed the parts and handed same to them. However, the 1st defendant in his testimony never alluded to the fact that he had removed the parts and lodged them with the police. As a matter of fact, when questioned under cross-examination regarding the parts, he denied that he had handed over the parts to the police nor received any parts

from them. It is quite clear that DW1 and DW2 were being economical with the truth when they said that the 1st defendant had lodged the parts with them. The police could easily have proved this fact by tendering the diary of action in evidence which would have had a record of the receipt of the parts from the 1st defendant. If the plaintiff claims to have handed the parts to them and the person to whom the police claim to have handed the parts to them denies doing so, it presumes that what the plaintiff is saying is the truth. When DW1 was further questioned on this, he sought to say that it was DW2 who had handed the parts to him for further investigations. Considering the evidence of the parties, I find as a fact that the plaintiff handed over the parts to the police. However, despite this, the police chose to hand over the parts to the 1st defendant when it closed the docket, having taken the view that a charge of stealing could not be preferred against the 1st defendant. They explained that because the 1st defendant already possessed the vehicle, they chose to hand over the parts to him. Why the police decided to take that course of action beats my imagination. By so doing, they enabled the 1st defendant to take possession of the vehicle wrongfully. For according to the plaintiff, when he came a week later with a mechanic to repair the vehicle, the car was nowhere to be found. By going for the excavator at its parked premises without the plaintiff's consent, the 1st defendant committed the tort of conversion. He had dealt with the plaintiff's machine in a manner which was adverse to him by excluding him from the use and possession of the excavator. The detention of the plaintiff's excavator was accompanied by a clear intention on his part to keep it. The 1st defendant, subsequent to taking the vehicle, had also rented it out to people.

At common law, the only remedy for conversion is damages. The normal measure of damages is the value of the goods converted, together with any consequential or special loss which was the natural and direct result of the wrong. See **Ada Co-operative Food Farmers Union Ltd. vrs. Abodei and Others, supra**. The plaintiff did not claim damages for the wrongful detention of his excavator. The special loss

he claims is loss of use. The plaintiff claims to recover GHc5,000.00 for each day the excavator had been working.

The plaintiff testified that the excavator worked at *“a 8 hourly sales of GHc2,500.00 and works for 16 hours in a day”*. My understanding of this is that the machine earned GHc5,000 daily for working for 16 hours. According to the plaintiff, the machine had been in the 1st defendant's possession, and he had used it for six (6) months since December 2019 till date. In effect, the plaintiff claims the recovery of GHc5000.00 a day for six months the machine had been working.

The 1st defendant testified that before he took custody of the excavator, he had to service it as it was not functioning. Since servicing the excavator, it had broken down several times, such that he had effectively used it for only an intermittent period of three months and parked it. He said he realized less than GHc3,000.00 daily in the three months he used the excavator as the machine could not effectively function throughout the days of use.

The plaintiff's evidence that the excavator made a daily sales of GHc5,000.00 was not challenged by the 1st defendant. Neither was the 1st defendant's evidence that the machine could not effectively function, such that he could hardly make a daily sales of GHc3,000.00 in the three months the excavator worked challenged by the plaintiff. Striking a balance between the two sales, the plaintiff should be entitled to a daily sales of GHc2,000.00. By the 1st defendant's admission, he had used the excavator for three months. However, I would discount the weekends as working days and deduct twenty-four (24) days from the ninety (90) day period, which should give us seventy-six (76) days. Thus, I enter judgment for the plaintiff for GHc152,000.00 against the 1st defendant.

(SGD.)
H/L AFIA N. ADU-AMANKWA (MRS.)
JUSTICE OF THE HIGH COURT.

COUNSELS

Philip F. Buckman appears for the Plaintiff.

Samuel Agbottah appears for the 1st Defendant.

Mabel A. Aikins (ASA) appears for the 2nd Defendant.