

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

ALIE ABESS

(Trading as Alie Abess Trading and General Enterprises)

Appellant

AND

SIERRA LEONE ROAD TRANSPORT AUTHORITY

(Now known as Sierra Leone Road Safety Authority)

Respondent

Coram:

Hon. Mr Justice R S Fynn, JA

Hon. Mr Justice M M Sesay, JA

Hon. Mr Justice E Taylor-Camara, JA

Representation:

C F Margai Esq, for the Appellant

E Kargbo Esq for the Respondent

JUDGMENT OF MR JUSTICE E TAYLOR-CAMARA JA.

DELIVERED THE 18<sup>TH</sup> DAY OF JANUARY 2022

1. The facts of this case as found by the trial judge, are as follows: The Appellant/Plaintiff is a commercial transport operator. The Respondent/Defendant is a statutory body charged with regulating the registration and control of vehicular traffic on the roads of Sierra Leone. It has powers to stop and detain vehicles where relevant road traffic offences have been, or are reasonably believed to have been committed. On 22 July 2011, a Mercedes Benz 1416 D commercial bus bearing registration mark AEQ 638 belonging to the Plaintiff was stopped and detained by traffic wardens working for the Defendant. The traffic wardens noticed that it displayed two road licence certificates instead of one. They therefore decided to detain the vehicle with a view to making further inquiries.
2. Upon inquiry it was discovered that the particulars on record for the detained bus did not tally with the registration mark on the number plate borne by the bus. The detained bus was a Mercedes Benz 1416 D commercial bus and bore the number plate with registration

mark AEQ 638, but the particulars on record for that number plate, called for the vehicle to be a Mercedes Benz 508 model bus. The Defendant's officers therefore concluded that the detained bus was carrying the wrong number plate.

3. The officers also made inquiries into the two road license certificates found on the windscreen of the detained bus and discovered that the licenses related to two separate Mercedes Benz buses, both belonging to the Plaintiff. One related to a Mercedes Benz model 508 bus with registration mark AEQ 638, and the other a Mercedes Benz model 1416 D bus with registration mark ADN 378. The license in respect of the latter had expired and the vehicle to which it related (the detained MB 1614D bus) was therefore unlicensed and ought not to be on the road. The Plaintiff accepted that the arrested bus bore the wrong number plate. He said that his employees had erroneously swapped the number plates of the vehicles so that the detained 1614 D bus now bore the wrong number plate. It was also discovered that there were several outstanding unpaid fines relating to the buses.
4. Due to the perceived gravity of the offence, the Defendant's officers decided not to issue a penalty ticket, but decided instead to refer the matter to the police, with a view to further investigation and possible prosecution. In the meantime, the arrested vehicle remained detained at the Defendant's depot.
5. The Plaintiff subsequently wrote to the Defendant requesting the release and return of the detained vehicle. The Defendant refused to release the vehicle until its investigations were complete and/or until the Plaintiff took the necessary steps to ensure that the detained vehicle became lawfully compliant. The Plaintiff failed to take any such steps.
6. The Plaintiff then instituted proceedings against the Defendant for the release of the vehicle and claimed damages against the Defendant for loss of earnings. The Defendant filed a Defence to the effect that the arrest and detention of the vehicle was not unlawful in that the detention was made pursuant to statutory powers of arrest and detention when, as in this case, an offence has occurred.



7. The matter was heard by the Hon Justice V M Solomon, JA (as she then was), who on 10 June 2016, held in favour of the Defendant and dismissed the Plaintiff's claim. It is against this decision that the Appellant appeals.

## **Grounds and Particulars of Appeal**

### Ground 1

8. The Appellant is claiming that the Judge wrongly evaluated the evidence and thereby arrived at a wrong conclusion, to wit, that it was vehicle with registration mark ADN 378 that was arrested and detained and not vehicle AEQ 638. The Appellant argues that his claim is in detinue for the return of his vehicle with registration mark AEQ 638. He argues that the Judge's finding that it was vehicle with registration mark ADN 378 that was arrested and detained and not vehicle AEQ 638, was wrong. The Appellant cites several extracts from the Judgement and evidence in support of his claim.
9. S2 of the Road Transport Act, 2007 provides that every vehicle must be registered. Registration involves recording the particulars of the vehicle. The particulars to be recorded include the make, model number as well as the engine and chassis numbers of the vehicle. S4 of the Road Transport Act, 2007 provides that every vehicle must be assigned a registration mark.
10. The Judge was clear that the vehicle arrested and detained was the MB1614 D bus which wrongly bore registration mark AEQ 638. That vehicle should in fact have borne registration mark ADN 378. It is also clear that the particulars on record for the vehicle with registration mark AEQ 638 were at variance with the physical attributes of the detained vehicle. Indeed the evidence is that the particulars on record for the registration mark AEQ 638 belonged to a different bus, an MB 508 bus, also owned by the Appellant/Plaintiff. The evidence of DW1 was clear on the issue:

*"When we checked we found that AEQ 638 was for a Mercedes Benz 508 bus and not for Mercedes Benz 1614 D bus.*

*"The vehicle arrested was a Mercedes Benz 1614 D bus." (at lines 11-13, page 74)*

11. The physical tributes of the detained vehicle did however correspond with the particulars on record for the vehicle with registration mark ADN 378. The Appellant (PW1), in his evidence confirmed this. He said:

*"The day it was arrested it had (sic) number AEQ 368 (sic). At that time that was not the correct number. It did not tally with chassis number. The actual number should have been AND (sic) 378."* (at lines 12-14, page 71)

12. The Judge summed up the relevant evidence as follows:

*"The vehicle with registration AEQ638 is a Mercedes Benz 508 bus with engine number: 31495910482185 Chassis No: WDB 3094251070849 -- See exhibit "A6". But the vehicle which was arrested and parked at the compound of the Defendant is Mercedes Benz 1614 D van with Engine Number: 36495010176773 and Chassis number WDB66936319163977 and it carried registration number AEQ 638."*

13. The Judge therefore concluded, correctly in my view, that the particulars for vehicle with registration mark AEQ 638 did not tally with the engine and chassis number of the vehicle arrested. In the circumstances, I do not see how it can properly be said that the Judge wrongly evaluated this evidence as claimed by the Appellant.

14. In similar vein, the Appellant claims (in his Argument (e)), that the Judge was wrong to conclude that it was not vehicle AEQ 638 that was arrested and detained, but vehicle with registration mark ADN 378. The Appellant refers to the evidence of DW2 to the effect that the apprehended vehicle carried the registration plate AEQ 638. Reference is also made to the Defence, which also acknowledges that it was the vehicle bearing number plate AEQ 638 that was arrested. But the vehicle bearing plate AEQ 638 was not the vehicle that it should have been. The vehicle bearing plate AEQ 638 should have been a Mercedes-Benz 508 bus. The vehicle actually arrested and detained was a Mercedes Benz MB 1614 D bus which should have had a different registration mark. It should have been ADN 378. (see the evidence of PW1 at page 71).

15. All the evidence is that an MB 1614 D bus was arrested. It bore number plate with registration mark AEQ 638 but should have been ADN 378. The vehicle physically detained was the vehicle that should have borne number plate ADN 378. The vehicle that should have borne registration mark AEQ 638 (the MB 508 bus) was not arrested or detained. The Respondent/Defendant did detain a vehicle bearing number plate with



registration mark AEQ 638, but that was not the vehicle it should have been. It bore the wrong number plate. The conclusion to be drawn from this is either (a) that the Respondent arrested and detained a vehicle that should have borne a number plate with registration mark ADN 378 or (b), that the vehicle arrested and detained bearing registration mark AEQ 638 was not the vehicle it should have been. Either way, the error in identification was caused by the Appellant/Plaintiff by himself or his servants or agents, and not by the Respondent.

16. The Judge was entitled to, and did conclude, that it was not vehicle AEQ 638 that was arrested but vehicle ADN 378. I do not see how she was wrong. I think it is clear that when the judge refers to vehicle ADN 378 as being the arrested vehicle, she meant, and I agree, that the vehicle arrested was the MB 1614 D bus that should have borne the number plate with registration mark ADN 378. She then held that a claim in detinue did not lie as the vehicle claimed for was not the vehicle detained. I am of the view that the judge was correct in her comprehension and analysis of the evidence, and in the conclusion she drew from that analysis. As such, the Respondent cannot therefore be liable in detinue for detaining a vehicle that they did not detain.
17. The Appellant also argues that the Judge wrongly evaluated the evidence, to wit, *"when a vehicle bears a wrong number plate as in this case, the vehicle cannot be identified by the wrong number plate."* The Appellant does not say what was wrong with this statement or conclusion. For my part, I find it very difficult to understand what the issue being raised by the Appellant is here. Throughout this case the vehicles have been identified by the registration mark each bears, rather than by their full description or particulars. In his Statement of Claim and in argument before the Court, the Appellant consistently attempted to identify and distinguish the respective vehicles by reference to the number plates alone. But as has been noted, the arrested vehicle did not bear the correct registration mark /number plate. This had the result that in the Appellant's arguments it was not always clear which vehicle he was referring to and there was a danger of issues being obfuscated. It would have helped the Court greatly if the Appellant had referred to and identified the respective vehicles by reference to their respective make, model, engine and/or chassis number. This was not done and at no time were steps taken to amend the pleadings.
18. Suffice it to say that I do not see anything wrong with the conclusion drawn by the Judge. She is very correct to say that when a vehicle bears the wrong number plate, it cannot be properly identified by reference to the particulars recorded on the registration card for that

vehicle. The particulars in the registration card for that number plate will necessarily differ from the actual particulars of the vehicle in question (assuming no duplicate, which should not happen as no two vehicles should carry the same engine and chassis number). In the absence of any explanation, argument or submission, setting out how the Judge's conclusion was erroneous, and for the reasons stated above, I do not think that a claim in detainment can be sustained and the appeal on this ground fails.

## Ground 2

19. Ground 2 is that the Judge completely ignored paragraphs 3 & 4 of the Plaintiff's Particulars of Claim in her evaluation of the evidence and thus arrived at an erroneous decision. What that erroneous decision is, is not stated in the Notice of Appeal. Nor are any Particulars provided.
20. In his Synopsis, submitted to this Court, Counsel for the Appellant sets out paragraphs 3 and 4 of the Defence:

### Paragraph 3:

*"By section 26c (4) of Act No. 5 2003, it is provided thus -- "where an offender fails to pay the fine and the prescribed administrative charge within 72 hours, the traffic warden shall refer the matter to the police who shall institute criminal proceedings against the offender."*

### Paragraph 4:

*"Contrary to the above, traffic wardens employed by the Defendant on the 22nd of July 2011 unlawfully detained the Plaintiff's Mercedes Benz bus registration number AEQ 638 which was plying the streets of Freetown as a commercial vehicle, thereby preventing the Plaintiff from realizing income therefrom as has been the case before the unlawful detention realizing Le1500000 per day. The said vehicle is still detained at the SLRTA compound occasioning loss to the Plaintiff."*

21. Counsel continues to challenge the decision of the Judge, where she says, at page 88 para.11:

*"There was non-compliance with the regulations by the Plaintiff and the Defendant has the power to prohibit the use of the said vehicle and is liable to a fine or imprisonment*



or both - Section 105 (2) Road Traffic Regulations 2011 S i No 6 of 2012."

22. Counsel argues that the Judge should have read Regulation 105 alongside S26c(4).

S26c(4) of the Road Transport Authority (Amendment ) Act No 5 of 2003 provides that:

*"Where an offender fails to pay the fine and the prescribed administrative charge within seventy-two hours, the traffic warden shall refer the matter to the police who shall institute criminal proceedings against the offender."*

23. The "fine and the prescribed administrative charge" being referred to are those imposed pursuant to Section 26c (1) of the same Act, which empowers a traffic warden to issue a ticket where an offence specified in the First Schedule to the Regulations has been committed, which tickets shall specify the offence committed, the penalty payable for such offence, and any administrative charges for handling or processing the offence out of court.

24. With respect to Counsel, I am not clear why the two provisions should be read together, nor what assistance such reading will provide. S26c(1) empowers traffic wardens to issue a ticket where a First Schedule offence has been committed. The offences listed in the Schedule are of a relatively minor or summary nature which can be dealt with administratively rather than prosecuting them in court, although this latter course still remains an option. As such there is a power in traffic wardens to deal summarily with such offences by the issuing of tickets. There is however no duty to do so. A warden may, but need not issue a ticket. It remains in the discretion of the warden and the authority whether in any given case, the issuance of a ticket is appropriate or a more serious course of action is to be taken. The evidence is clear that in this instance, officers considered the gravity of the situation to be such that issuing a ticket was not appropriate.

25. The evidence of DW1 is clear on this. In re-examination he said.

*"We did not issue a ticket because of the offence as the vehicle bore two registration numbers. A ticket was not issued because of the gravity of the offence."*

26. It seems to me that S26c(4) only applies if a ticket is issued pursuant to S26c(1). If, as here, no ticket was issued, then S26c(4) does not apply.

27. Even if S26c(4) did apply and a ticket was issued, I do not see how this is impacted by the application of Regulation 105. S26c(4) merely stipulates the timeframe within which any fine and charges levied are to be paid. They must be paid within 72 hours failing which the traffic warden must, under S26c(4), refer the matter to the police for prosecution. It is the fine and charges that must be paid within 72 hours. The reference does not, as Counsel appears to be arguing, need to be made within 72 hours. Nor is there an obligation to release the vehicle within 72 hours. Whilst I agree with Counsel that there is no power to detain vehicles indefinitely, this has nothing to do with the application of S26c. There is no relationship between the detention of the vehicle on the one hand, and on the other, the obligations imposed on the fined offender or the powers and duties of the traffic warden upon failure of the offender to make payment within the stipulated period. Neither the warden nor the authority are under an obligation to release the impounded vehicle. On the contrary, there is a duty on the authority not to allow an offending vehicle on the road until it is lawfully compliant.
28. Regulation 105 (1) provides that an appropriate authority may inspect any motor vehicle or trailer with a view to ascertaining whether the provisions of the Act, the Regulations, or permits or notice issued under the Regulations, are being complied with.

Regulation 105 (2) provides that:

*Where an appropriate authority is satisfied that there is non-compliance with these regulations it may prohibit the further use of the motor vehicle or trailer until there is compliance and any person using or permitting the use of a motor vehicle or trailer in contravention of any prohibition commits an offence and is liable on conviction to a fine not exceeding Le400,000 or to imprisonment for a term not exceeding 6 months or to both the fine and imprisonment.*

Further, Regulation 105(3) reads:

*"An appropriate authority may detain any vehicle to ascertain whether the vehicle or any trailer drawn by it is used to contravene the Act or these Regulations and may detain the vehicle or trailer until the issues leading to the detention are disposed of."*

29. The Respondent/Defendant is the appropriate authority. It is clear also that the Appellant's MB1614 D vehicle with registration mark AEQ 638 was non-compliant with the Act and Regulations in that it did not bear the correct registration mark/number plate.



nor did the registered particulars for the detained vehicle bearing number plate AEQ638 tally with the particulars of the actual vehicle, and that same vehicle bore two road license certificates when only one should have been displayed. That there was non-compliance was not disputed by the Appellant. In the circumstances, it seems to me that the Respondent, being the statutory regulatory and appropriate authority was quite entitled to detain and prohibit the further use of the vehicle until *"the issues leading to the detention are disposed of"* or at least until there had been compliance with the law by the Appellant. The authority was quite within its right to detain the non-compliant and offending vehicle and by law could not and should not have allowed the vehicle to be released without it being properly registered, licensed and plated. At the very least, it was up to the Appellant to make arrangements for the vehicle to be properly licensed so it could be put back on the road. The evidence of DW 1 at page 74 was that the vehicle license for the arrested MB 1614 D vehicle with registration mark ADN 378 had expired. As such it could not lawfully be let back on the road unless and until the Appellant had licensed it. The Respondent would have been in breach of its statutory duty had it let the offending bus on the road without being properly licensed. No evidence was led to demonstrate that the Appellant tried to get the detained vehicle licensed and have the correct registration mark /number plates affixed to it. The fact is that the Appellant was operating his vehicle unlawfully, and the Respondent was entitled, indeed under a duty, to prohibit the vehicle from plying its trade until it was made legitimate by the Appellant and all the issues leading to the detention are disposed of. Those issues continue through this appeal.

30. The Appellant however claims damages in detinue and for loss of earnings. As said earlier, the vehicle for which detinue is claimed was the MB 1614 D bus detained which the Appellant identified as bearing plate AEQ 638. The vehicle detained, whilst unlawfully bearing number plate AEQ 638 was not the vehicle that it should have been. It was in fact the vehicle that should have borne the number plate ADN 378. It was a different bus to that claimed. For the reasons stated above, I do not think the arrest and continued detention was unlawful.
31. The Plaintiff/Appellant also claims for damages for loss of earnings (claimed at £1, 500,000 per day). I do not think that the case for damages has been made out. Even if a case for damages were made out, it would have been up to the Appellant to mitigate his loss. This he could have done had he accepted that through his error, his vehicle was non-compliant with the law and that he was operating it unlawfully. He could then have tried to correct that error by licensing the vehicle and putting the correct number plate on it. He would then be in a position to put the vehicle on the road and could have entered

into discussions with the authority to pay off any outstanding fines so that the vehicle could be released whilst the authority decides whether to prosecute or not. There is no evidence that the Appellant made any such effort to mitigate the situation or his loss, and in the circumstances the authority was entitled to keep the vehicle off the road. That the vehicle was and is off the road and losing him income was due to the Appellant's original unlawful act and his subsequent failure to ameliorate the situation. As such, the Appellants claim for damages was rightly rejected and his appeal on this ground likewise.

32. In summary, I think the Judge was correct in her evaluation of the evidence, the findings she drew therefrom, and the law applied. Accordingly, the appeal as a whole fails.

33. Costs to the Respondent, such costs to be taxed if not agreed.

Signed: *E Taylor-Camara*  
Mr Justice E Taylor-Camara, JA

Mr Justice R S Fynn, JA: I agree.

Signed: *R S Fynn*  
Mr Justice R S Fynn, JA

Mr Justice M M Sesay, JA: I agree.

Signed: *M. M. Sesay*  
Mr Justice M M Sesay, JA

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