

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA

CIVIL SUIT NO. 66/95

MOHAMED ABDALLAH ::::::::::::::::::::::::::::::::::: PLAINTIFF  
VERSUS

JUMA MUBIRU ::::::::::::::::::::::::::::::::::: DEFENDANT  
BEFORE: THE HONOURABLE JUSTICE C.M. KATO

J U D G M E N T

The plaintiff in this suit is called Mohamed Abdalla and the defendant is one Juma Mubiru. The plaintiff by this suit is requesting this court to order the defendant to pay to him a total sum of 8,800,000/= being amount of money he paid to the defendant to purchase a vehicle which the defendant did not deliver. He is also praying for general damages for non-use of the vehicle and for inconveniences arising from the breach of contract together with costs of the suit. On his part the defendant denied the claim and put in a counter claim for special damages amounting to 6,005,500/= together with general damages for breach of contract.

At the trial five issues were framed and those are:-

1. whether there was any valid contract between the parties,
2. If there was any contract at all who is in breach of that contract.
3. whether the plaintiff is entitled to the remedies prayed for.
4. whether the defendant's counterclaim should be allowed.
5. quantum of damages.

Before I proceed to deal with the merits and demerits of this case I should point out that when both parties closed their cases there were no submissions from both sides, this was so because the learned counsel for the defendant Mr. Masiga fell sick immediately after the close of the case for the defence and Mr. Mutyabule the learned counsel for the plaintiff, quite rightly in my view, thought it unfair to take advantage of the sickness of his learned



brother so he declined to make any submissions in the absence of the defence counsel who unfortunately died even before this judgment was written.

The background of this case as presented by the plaintiff is that the plaintiff and the defendant are related by marriage, the plaintiff's sister having been married to the defendant. Sometime in 1994 the two brothers-in-law agreed that the defendant should on behalf of the plaintiff import a motor vehicle from Dubai. Pursuant to that agreement the plaintiff paid 8,800,000/= he paid the money in two instalments, the first instalment was for 1,800,000/= the second instalment was for 7,000,000/=: but the vehicle was never delivered to him. The defendant does not deny having received that money and having failed to deliver the vehicle but he maintains that the fault was with the plaintiff who changed his mind at the last moment and refused to accept delivery of the vehicle on the ground that he was no longer interested in taxi business.

I now turn to the issues as framed and agreed upon by the parties starting with the first issue first. According to the evidence as adduced by both parties there is no doubt over the fact that there was a contract of sale between the plaintiff and defendant where by the plaintiff agreed to pay and indeed paid 8,800,000/= to the defendant for a reconditioned vehicle which the defendant agreed to import for him from Dubai. Since both parties are agreed to the existence of this contract my answer to the first issue is in the affirmative.

Regarding to the issue of who was in breach of the contract, I feel this matter can only be properly decided after considering the evidence as adduced by both sides. According to the evidence of the plaintiff, when he paid to the defendant the purchase price the defendant agreed to deliver the vehicle to him within 3 months but he did not deliver that vehicle to date, each time he used to ask him about the vehicle the defendant used to tell him that the vehicle had not arrived until he decided to file this suit.



This piece of evidence was supported by the evidence of Mohamed Sharef (PW2) who witnessed the payment of 7,000,000/= to the defendant as part of the agreed 8,800,000/=. In his evidence this witness (PW2) stated that the vehicle was supposed to be delivered within 3 months from 19/8/94 but the vehicle was never delivered. On his part the defendant testified that he received a total amount of 8,800,000/= from the plaintiff but the whole amount was supposed to be 22,000,000/= for a reconditioned Toyota Hiace and that was the amount which the plaintiff had agreed to pay him; when the vehicle arrived the plaintiff said he did not want the vehicle any more and demanded a refund of his 8,800,000/=. They entered into an arrangement that before he could return to the plaintiff his money the vehicle should be sold off so that the defendant could also recover the money he himself had invested in the vehicle, but before this arrangement could be enforced the plaintiff filed this suit.

The issue before the court now is whether the plaintiff paid the agreed amount to the defendant and the defendant failed to deliver the vehicle, this issue raises another issue which is what amount was agreed upon by the parties as purchase price, was it that stated by the plaintiff as being 8,800,000/= or that stated by the defendant which was 22,000,000/=?

The evidence as adduced by both sides makes it clear that the plaintiff in fact did pay the agreed sum of 8,800,000/=. It is also clear that after that payment the defendant did not hand over the vehicle to the plaintiff. The defendant however says his failure to deliver the vehicle was because the plaintiff had declined to receive the vehicle as he was no longer interested in carrying out taxi business. The plaintiff on his part says the defendant never delivered the vehicle to him. In my view the evidence available does conclusively indicate that the defendant was not prepared to deliver the vehicle to the plaintiff, this is so because he sold the vehicle to a third party although that might have been done in order to mitigate the losses, still it does show that the defendant had finally decided not to carry out the contract which he had made with the plaintiff. Another reason why I



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to the plaintiff is that the defendant felt the plaintiff still had to pay more money to him on the same vehicle. These two factors do support plaintiff's contention that the defendant in fact did not deliver the vehicle to him.

As regards to what was the agreed amount, I believe the plaintiff when he says that the purchase price for the vehicle was 8,800,000/= which he actually paid to the defendant. This finding is supported by the defendant's contradictions as to what happened. In paragraph 3 of his written statement of defence the defendant said the plaintiff had ordered for a brand new Toyota Hiace at the cost of 20,000,000/= inclusive of taxes but when in court he changed the story and said the plaintiff was supposed to pay him 22,000,000/= for the vehicle which was not even new but reconditioned, in my view this is a clear indication that the defendant was not being sincere as to what amount of money was agreed upon as the price for the vehicle.

In these circumstances I believe the plaintiff when he says that he paid all the amount which had been agreed upon and that the person who was in breach is actually the defendant who has not been able to deliver the vehicle after receiving the agreed amount.

My answer to issue no. 2 is that the plaintiff was not in breach of the contract but the defendant was when he failed to deliver the vehicle to the plaintiff when the plaintiff had paid all the sum of money.


That leads me to issue no. 3 which is whether or not the plaintiff is entitled to the remedies prayed for. Since the defendant was in breach of the contract the **plaintiff is definitely entitled to the remedies prayed for.** In his prayer the plaintiff is requesting the court to give him general damages for breach of contract, general damages for non-use of vehicle and general damages for inconveniences which he has suffered. I feel the 3 damages sought by the plaintiff are the same. Considering all the circumstances of this case I will award him 5% of the amount claimed as general damages for breach of contract, non-use of the vehicle, and any inconveniences that the plaintiff might have suffered. I accordingly award him 440,000/= (being 5% of



reasonable in view of what happened. It must be pointed out here that the plaintiff did not ask this court to award him interest on any amount awarded by the court. In addition to these damages the plaintiff is certainly entitled to recovery of his 8,800,000/= which he paid to the defendant and the defendant failed to deliver the vehicle for which the money was paid hence failure of consideration. The third issue is therefore answered in the affirmative.

I now turn to the fourth issue which deals with counterclaim. During the hearing of this suit when under cross-examination the defendant decided to abandon his counterclaim on the ground that the counterclaim was made before he sold the vehicle to Mr. Wandera and that the same vehicle was still registered in his names so he found no justification in continuing with the counterclaim.

In all these circumstances I am faced with no any other better alternative but to enter judgment in favour of the plaintiff against the defendant. Judgment is accordingly entered for the plaintiff for a total sum of 9,240,000/= (being 8,800,000/= refund of money paid to the defendant by the plaintiff and 440,000/= damages) with costs of this case to the plaintiff.

  
C. M. KATO

JUDGE

8/7/1996



...in view of what happened. It must be pointed out that the defendant did not ask this court to award him interest on any amount awarded by the court. In addition, the defendant's claim for the plaintiff is certainly entitled to recovery of his \$300,000/- which he paid to the defendant and the defendant failed to deliver the vehicle for which the money was paid hence failure of consideration. The third issue is therefore answered in the affirmative.

I now turn to the fourth issue which deals with counter-claim. During the hearing of this suit when under cross-examination the defendant decided to abandon his counter-claim on the ground that the counterclaim was made before he sold the vehicle to Mr. Pandey and that the same vehicle was still retained in his name so he found no justification in continuing with the counterclaim.

In all these circumstances I am faced with no say other than alternative but to make judgment in favour of the plaintiff against the defendant. Judgment is accordingly entered for the plaintiff for a total sum of \$340,000/- (being \$300,000/- refund of money paid to the defendant by the plaintiff and \$40,000/- damages) with costs of this case to the plaintiff.

G. M. KATO  
JUDGE  
27/11/55