

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
H.C.C.S NO 375 OF 1999

FRED BAKESIMBA::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

SAM ENGOLA::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HON. LADY JUSTICE M.S. ARACH-AMOKO

JUDGEMENT

The Plaintiff and the Defendant are both businessmen in Kampala. The Plaintiff's claim against the Defendant is for special and general damages for breach of contract, interest and costs of the suit.

According to the plaint, the facts giving rise to the Plaintiff's cause of action arose as follows: Sometime in 1998, the Plaintiff imported into Uganda 1 used motor vehicle 8 used motor cycles and other motor spare parts. The said motor cycles were subsequently registered in the Plaintiff's names.

While awaiting to sell the said items, the Plaintiff received a fax from Japan inviting him to attend an African Night Work Camp. The Plaintiff had no money to enable him to travel to Japan. He subsequently approached the Defendant to whom he says he sold the motor vehicle at an agreed price of Shs 11,000,000 and 6 million for six motor cycles at a rate of Shs 1 million each; giving a total of Shs 17 million. The Defendant paid shillings 2.2 million to enable him to pay the taxes and clearing charges and Shs 300,000; making a total of Shs 2.5 million as part payment. The Plaintiff delivered the items to the Defendant's home in Mbuya, but retained the logbooks. The Defendant told the Plaintiff to go back for payment the next day. When the Plaintiff went back for payment, the Defendant kept on avoiding the Plaintiff several times and later issued the Plaintiff a cheque for Shs 7 million as part payment. The cheque was dishonoured when the Plaintiff presented the same for payment. When threatened with legal action, the Defendant paid a further Shs 6 million as part payment, leaving an outstanding balance of Shs 8.5 million. The Defendant has not paid this balance inspite of various persistent demands, hence this suit.

In his written statement of defence, the Defendant denied the Plaintiff's claim, the facts giving rise to the cause of action and the various persistent demands made by the Plaintiff for the money in question.

The Defendant however contended that the agreed price for the truck was Shs 8 million and the motor cycle was Shs 700,000 each, making a total of Shs 12,000,000 and not shs.11, 000,000 and 6,000,000 as alleged by the Plaintiff. The Defendant averred further that he has paid Shs 12,200,000 in various installments. He has therefore discharged his obligation, and is not indebted to the Plaintiff at all. The suit should therefore be dismissed with costs.

The following issues were framed and agreed upon at the commencement of the trial:

- 1) What was the agreed purchase price between the parties?
- 2) What were the payment terms?
- 3) What is the total payment and how much is the balance owing, if any?
- 4) Remedies available to the Plaintiff if any.

The Plaintiff was the sole witness and so was the Defendant. Both Counsels filed written submissions. I have dealt with the issues in the order in which they were framed.

The first issue, is what was the agreed price of the goods? This was an oral agreement. The evidence is therefore what can be gathered from the testimony of the Plaintiff and the Defendant. The Plaintiff insisted in his testimony that the agreed purchase price was shs.11 million for the vehicle and Shs 6 million for the motor cycles at a rate of Shs 1 million per motor cycle. This was a result of their negotiation where he had charged Shs 12million and Shs 1.2 million for each motorcycle. The Defendant in his written statement of defence contended that the agreed price was Shs 8 million for the vehicle and Shs 700,000 each for the motor cycles. This would make a total of Shs 12.200,000 ($8,000,000 + 700,000 \times 6$). During examination in chief, the Defendant however testified that "Fred sold me one Toyota Mitshubishi pick up 1982 model at Shs 8 million and I paid him in full. He also sold me 8 motor cycles at Shs 600,000 each. He delivered only 6 of them two were stolen." If this testimony is to be believed, then the 6 motorcycles would cost 3.6 million and total contract price would be Shs 11.6 million. He then went on to give various figures which did not tally.

He tried to explain the discrepancy during cross-examination that the Shs 100,000 difference on the motorcycles was after registration. I do not except this evidence as it is contradictory and an after thought. I instead accept the testimony of the Plaintiff, who testified without any contradictions. I therefore find it as a fact that the agreed price was Shs 11 million for the truck and Shs 6 million for 6 motorcycles making a total of Shs 17 million.

On the Second issue, that is the payment terms, the Plaintiff testified that the Defendant paid him shillings 2.5 million before he delivered the truck and the motorcycles to the Defendant. He testified that the Defendant told him to go back for the balance the following day. He did not get the money. He went back after 5 days still he did not get paid. He pleaded with the Defendant that the camp was remaining with only 5 days to close and he had to go. The Defendant said he had no cash. He gave a part payment of Shs 7,130,000 by a post-dated cheque (Exhibit P3) which later on bounced. From the above evidence, it is evident that the Plaintiff expected the payment immediately after delivery so that he could travel to Japan. It is also evident that the Plaintiff was ready to accept payment by installment as evidenced by the installments he received. The Plaintiff testified that " This

time I did not make any agreement because the payment was going to be done at once."

Which brings me to the third and fourth issues, that is the total amount paid, the balance and the remedies available. The Plaintiff told court that the Defendant paid some of the money by installments as hereunder:

- 1) Shs 2.2 million as tax.
- 2) Shs 300,000 as repair charges for the motorcycles
- 3) 6 million through his lawyers.

Making a total of Shs 8.5 million. The balance would then be Shs 17 million less Shs 8.5 million which is Shs 8.5 million.

The Defendant on the other hand contended that he has paid everything and is no longer indebted to the Plaintiff. In his written statement of defence he averred that he paid a total of Shs 12.2 million in various installments and he did not owe the Plaintiff any money at all. He told court in his evidence in chief on the other hand, as follows: -

"He told me that he wants Shs 8 million for the vehicle plus Shs 600,000 for each motor cycle, that is Shs 3.6 million making a total of Shs 11.6 million. I had already given him a total of Shs 5.7 million as follows:

Shs 2.7 million for clearance

Shs 2 million for the other vehicle

500,000 extra

300,000 service

5,700,000

We agreed that the 5.7 million should be deducted from the Shs 11.6 million. The balance was now Shs 6.1 million. Out of this balance, he told me that he had sold me the vehicle duty free. So I had to pay an extra money for registration-----it came to Shs 6.8 million. So I told him that I would round it to Shs 7 million and he agreed."

As can be clearly seen from the foregoing statement, the total payment allegedly made by the Defendant does not add up to Shs 5.7 million, but it adds up to Shs 5.5 million. And if he was a serious businessman and not a charitable organisation as he stated, how could he "round up" the sum to Shs 7 million. All in all, I find the Defendant's testimony regarding the installment payments not only confusing but a pack of lies and a ploy by the Defendant to escape his indebtedness to the Plaintiff. I therefore believe the Plaintiff's testimony that the Defendant has so far paid only Shs 8.5 million

as earlier on spelt out. The balance outstanding is Shs 8.5 million and the Plaintiff is entitled to it.

The Plaintiff also testified that as result of the Defendants actions he paid several visits to the Defendant's office and home to demand his money, he eventually missed the work camp in Japan where he was to make some money, the Defendant kept on dodging him until he gave a cheque which was dishonoured, as a result of which the Plaintiff had to report the case to Central Police Station. All this affected his business. The Plaintiff is therefore entitled to general damages. The Plaintiff's Counsel proposed Shs 6 million. This is on the high side and no basis has been given for it. I think the sum of Shs 1.5 million is adequate to compensate the Plaintiff for all the inconveniences suffered.

The Plaintiff is also entitled to interest on the outstanding amount since this was a commercial transaction. Costs also follow the event.

In the result, I enter judgment for the Plaintiff against the Defendant for:

- 1) Shs 8.5 million outstanding balance.
- 2) Shs 1.5 million general damages

- 3) Interest on (1) at a rate of 20% p.a from date of filing till payment in full.
- 4) Interest on (2) at court rate from the date of judgment till payment in full.
- 5) Costs of the suit.

M.S.Arach-Amoko
JUDGE

Judgment read in draft in the presence of:

- 1) Andrew Wamina for Defendant.
- 2) Ms Khalayi for Plaintiff
- 3) Okuni C/clerk.

M.S.Arach-Amoko
JUDGE.
29TH JAN 2002.