

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL SUIT NO. 631 OF 2004

CHATTA INVESTMENTS LTD. ::

PLAINTIFF

VERSUS

WINNIE OKIDI ::

DEFENDANT

(t/a War Affected Children Rehabilitation Organisation)

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

J U D G M E N T:

This case is for the recovery of Ug.Shs.12,000,000/= being the balance of the sale of a motor vehicle Reg. No. UAF 495D to the defendant belonging to the plaintiff. The brief facts of the case are that by a Sale Agreement dated 26th September 2004 the plaintiff, a dealer in motor vehicles, sold his motor vehicle Reg. No. UAF 495D Mitsubishi Pajero (Golden Brown colour Chasis No. V44 - 4006793) to the defendant at the cost of Ug.Shs.19,000,000/=. The defendant made a down payment of Ug.Shs.7,000,000/= cash leaving a balance of Ug.Shs.12,000,000/= which was payable by the 30th December 2004. However it is alleged that despite

numerous demands no payment has been effected. Indeed a cheque dated 20th March 2004 when presented at the bank was dishonoured.

The defendant in her defence pleads that motor vehicle was actually not sold to her but to an organisation known as “War Affected Children Rehabilitation Organisation” which is a company limited by guarantee and is a registered Non-Governmental Organisation (NGO). Therefore the dispute affects another third party altogether.

When trial began Mr. Innocent Kihika counsel for the defendant informed Court that his firm has lost contact with the defendant. He applied to withdraw from the case as he did not have sufficient instructions to proceed. It was then agreed that Mr. Kihika withdraws from the case and that the defendant be served by substituted service to attend the hearing and defend herself. Substituted service was effected but the defendant still did not attend Court.

One issue was framed for determination namely;

1. Whether the defendant Winnie Okidi is liable for the Ug.Shs.12,000,000/= being the balance of the purchase price of motor vehicle UAF 495D from the plaintiff.

Mr. A. Mubiru appeared for the plaintiffs.

The plaintiff called one witness Ms. Puddy Nshemereirwe (PW1) the plaintiff company’s accounts officer (responsible for sales and debt collection). Ms.

Nshemereirwe testified that by an agreement dated 8th November 2003 Exh. P1 the plaintiff sold the defendant the said suit vehicle at Ug.Shs.19,000,000/=.

The defendant paid Ug.Shs.7,000,000/= cash and left a post dated cheque of Ug.Shs.12,000,000/= as security.

When the cheque was banked it was dishonoured. This was notified to the defendant who advised the cheque be rebanked. The cheque was rebanked by the plaintiff and was for the second time dishonoured.

Thereafter the defendant is said to have become evasive. The matter of the dishonoured cheque was referred to the police for action. A copy of the dishonoured cheque was tendered in evidence as Exh. P3.

PW 1 Ms. Nshemereirwe further testified that the plaintiff company retained the logbook of the car until it was paid for in full.

I have perused the Court file on this matter and the submissions of counsel for the plaintiff on the matter.

From the onset I must point out that the defendant shows little interest to effectively defend this matter. She instructed counsel but has chosen not to keep them briefed in this matter. The only defence I can see in this matter is in Para 3 and 4 of the defence which is that the plaintiff should have sued

a company she represented in the names of M/S War Affected Children Rehabilitation Organisation in its corporate capacity and not her. The Agreement Exh. P1 was written in the names of the plaintiff's company and M/S War Affected Children Rehabilitation Organisation (WACRO). The defendant merely signed the agreement on behalf of WACRO as a buyer and therefore not in her personal capacity.

This defence is becoming quite popular in cases such as this. In the case of **John Magala** (t/a M/S Masajja Modern Primary School) **David Mukasa** (t/a HCCS 578 of 2004) which also involved the non payment of school fees by the defendant a similar defence was raised. It was M/S Children Vision Uganda should have been sued in its corporate capacity and not the defendant. I held in that case that for the defendant to rely on such a defence the onus was on the defendant to prove that the said organization was indeed a body corporate. If the fact of incorporation cannot be proved then it cannot be relied upon.

In **John Magala** case (supra) the defendant chose to keep away from Court and gave no evidence of incorporation and the defence was rejected.

In this particular case the defendant Ms. Winnie Okidi has done the same thing. There is no evidence at all that "M/S WACRO" is a body corporate. Indeed even the dishonoured was a personal cheque for one Easter Santos Okidi (a person not explained to Court as to who she is) and not a corporate cheque from "M/S WACRO".

I accordingly dismiss this defence as not being credible. I am inclined to believe the evidence of PW1 that this car was in reality bought by the defendant personally probably for use by her organization incorporated or not. More likely not incorporated.

I am convinced from the evidence of PW 1 who struck me as a straight forward witness that the sum of Ug.Shs.12,000,000/= is due and owing to the plaintiff company and I accordingly award it to them.

Counsel for the plaintiff has also prayed for Ug.Shs.4,000,000/= as general damages and costs of the suit.

Counsel for the plaintiff did not justify the figure of Shs.4,000,000/= as damages. Indeed in his written submissions at one point he mixed up special damages with general damages. Be that as it may I would award general damages of Ug.Shs.1,500,000/= as reasonable profit lost from the non utilization of the Ug.Shs.12,000,000/= in the plaintiff's business.

I also award costs to the plaintiff.

Geoffrey Kiryabwire

JUDGE

Date: