

appear. The Plaintiff was accordingly allowed to state his claim and prove it in the absence of the Defendant.

From the evidence as presented to Court, in July 2003, the Plaintiff was desirous of facilitating some of the members of his constituency to obtain motorcycles for them, on hire purchase basis. The Plaintiff was introduced to the Defendant, a dealer in motorcycles, by his colleague Hon. Ellioda Tumwesigye of Sheema North. The Plaintiff approached the Defendant on the same issue and upon the Defendant's confirmation that he would obtain and supply the said motorcycles, the Plaintiff paid the Defendant a sum of Shs.20,400,000- in one installment. The Defendant signed for it. The motorcycles were supposed to be delivered within 2 weeks after the said payment. To date, the Defendant has not delivered a single motorcycle nor has he made any effort to refund the said money. The evidence of PW1 Prof. Kabwegyere, PW2 Enock Nkongi and PW3 Comfort Tumwesigye Kabwegyere is the same on this point.

From their evidence, I'm satisfied that the Plaintiff paid and the Defendant received money for the delivery of motorcycles to the Plaintiff's Constituency. In his defence, the Defendant had averred that he agreed with the Plaintiff that he would supply a total of 200 motorcycles in 4 phases. That for each phase 50 motorcycles would be supplied on the arrangement that for each phase, Shs.60m would first be advanced to the Defendant, and upon delivery of the 50 motor cycles, the balance would be paid to him. He claims that he

received only Shs.14,400,000- in cash and a post dated cheque of Shs.6m from one Nkonge as an advance payment. He claims that the cheque for Shs.6m was dishonoured. He has not appeared to substantiate his allegations against the Plaintiff.

I have considered the evidence of the three witnesses. It is to the effect that on 3/10/2003 the Defendant went to the Plaintiff's office in Ishaka for money for the said motorcycles. That he took it under his signature on a voucher. The voucher is on record as P. Exh. 11. It shows that Shs.20,400,000- was signed for. There is further evidence that the Defendant attempted to refund the same to the Plaintiff, as per P. Exh.1 dated 13/12/2003 with a promise that he would pay the balance of Shs.400,000- in cash, but the said cheque bounced on presentation. To date, this money has not been paid. I have seen no reason to doubt their evidence. I'm satisfied that the Defendant received it.

As to whether the Defendant delivered the motorcycles, there is no evidence that he did. The evidence on record is that he did not supply them. There is also evidence that following constant checks and demands/threats to the Plaintiff and his employees in Ishaka, the Plaintiff later refunded what his constituents had deposited under the scheme. I'm satisfied that no motorcycle has been delivered to date.

As to whether the Plaintiff is entitled to the remedies sought, I think this is quite obvious. Money which is paid to one person which rightfully belongs to another, as where money is paid by A to B on a consideration which has wholly failed, is said to be money had and received by B to the use of A. It is recoverable through an action by A. From the evidence of PW1, PW2 and PW3, the consideration for which the payment was made to the Defendant has wholly failed. Therefore, the Defendant is under obligation to refund it. It is the Plaintiff's prayer that he be refunded a sum of Shs.20,400,000- and that the Defendant pays interest on it at the rate of 25% per annum from the date of Judgment till payment in full. These prayers are granted to him. The Defendant shall also pay the costs of the suit.

In view of the above orders, the Defendant's counter claim which is unsupported by evidence cannot stand. It is dismissed.

In the result, Judgment is entered for the Plaintiff against the Defendant. He is ordered to:

- i. Refund to the Plaintiff a sum of Shs.20,400,000- (Twenty million four hundred thousand).
- ii. Pay interest on the decretal sum at the rate of 25% per annum from the date of Judgment till payment in full.
- iii. Pay costs of the suit.

It shall be so.

Yorokamu Bamwine

J U D G E

30/06/2005