

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

HCT-00-CC-CS-0095 OF 2005

SYLVAN KAKUGU TUMWESIGYIRE ::::::::::::::::::::

PLAINTIFF

VERSUS

TRANS SAHARA INTERNATIONAL GENERAL TRDG L.L.C. ::::::::::
DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

J U D G M E N T:

The plaintiff Sylvan Tumwesigyire brought this case against the defendant company M/S Trans Sahara International Trading L.L.C. seeking the recovery of a motor vehicle a Toyota Premio worth \$2,200 or its equivalent in Uganda Shillings and a refund of the value of goods worth US\$1150 that went missing in the car, general damages, interest and costs of the suit.

The brief facts of the case are that on or about 3rd December, 2001 the plaintiff bought a motor vehicle a Toyota Corona Premio (Chasis No. ST 190-4003442) from World Auto Motors, a company based in the United Arab Emirates (UAE) at USD\$2,200/=. The motor vehicle the subject of this suit

was one of the five motor vehicles the plaintiff had bought in the United Arab Emirates (UAE). Inside the suit motor vehicle were placed an assortment of goods worth US\$1150 which included;

1. 4 food warmers worth US\$200
2. 4 car tool boxes worth US\$200
3. 1 radio cassette player worth US\$100
4. 2 speaker worth US\$200
5. 1 phone worth US\$250
6. 1 camera worth US\$200

The plaintiff then contracted the defendant at its Dubai branch office to ship the said 5 vehicles (inclusive of the suit motor vehicle with assorted items inside it) from the U.A.E to Mombasa. The defendant is alleged to have accepted the said 5 vehicles for shipment.

However, only 4 vehicles minus the suit vehicle with goods arrived at Mombasa. The plaintiff then made several demands at the defendant's Kampala office to account for the suit motor vehicle but the said motor vehicle disappeared without trace. The defendants also did not compensate the plaintiff for the said loss.

The plaintiff filed a suit by plaint on the 2nd February 2005. Summons were issued to the defendant to file a defence on the 3rd February 2005. The defendants did not file a defence and on the 26th May 2005 the learned Registrar of this Court entered interlocutory judgment against the

defendant under order 9 rule 6 of the civil procedure rules as the plaintiff had filed an affidavit of service of the said summons.

The suit was then set down for formal proof.

To focus the formal proof procedure 3 issues were framed namely;

1. Whether there was a shipping contract between the plaintiff and the defendant?
2. Whether the defendant is liable for the motor vehicle which got lost in transit.
3. Whether the plaintiff is entitled to the remedies prayed for.

Issue No. 1: Whether there was a contract between the plaintiff and the defendant.

The plaintiff (PW1) gave evidence that he bought the said motor vehicle from M/S World Auto Motors in U.A.E at US\$2200 as evidenced by an original receipt Exh. P1 dated 3rd December, 2001. He then exhibited an invoice Exh. P2 from the defendant dated 4th December 2001 for the shipment of the said 5 vehicles from U.A.E to Mombasa. The plaintiff also exhibited a letter Exh. P4 dated 7th January, 2002 where the Managing Director of the defendant one Yusuf Manafa acknowledged that the suit motor vehicle was missing and was trying to trace it.

Clearly the evidence does show and I find that a contract did exist between the plaintiff and defendant to ship the suit motor vehicle from the U.A.E to Mombasa -Kenya.

Issue No. 2: Whether the defendant is liable for the motor vehicle

which got lost in transit.

Following my finding on issue No. 1 and in the absence of a written contract I find that the contract in issue is one of bailment.

A contract of bailment according to the learned author P.S. Atiyah in his book **“The Sale of Goods”** 6 edition Pitman P7.

“...is a transaction under which goods are delivered by one party (the bailor) to another (the bailee) on terms which normally require the bailee to hold the goods and ultimately to redeliver them to the bailor or in accordance with his directions...”

In this case a motor vehicle was delivered to the defendant as bailee to ship it from U.A.E to Mombasa – Kenya. At Mombasa the defendant bailee was unable to redeliver the said motor vehicle to the plaintiff as bailor.

I accordingly find that the defendant as bailee is liable for the motor vehicle which got lost in transit.

Issue No. 3: Whether the plaintiff is entitled to the remedies prayed for.

The plaintiff prayed for 5 remedies as follows:-

Remedy 1: Recovery from the defendant of a Toyota Corona Premio worth US\$2,200 or in the alternative, refund of the purchase price or its equivalent in Uganda Shillings.

Counsel for the plaintiff referred me to the case of **Agadi Didi -Vs- James Namakaso** Civil Suit No. 1230 of 1988,

Where Justice Ntabgoba (Principal Judge as he then was) held that;

“...failure to file a defence raises a presumption or constructive admission, of the claim made in plaint and the story told by the plaintiff, in the absence of a defence to contradict it, must be accepted as the truth...”

Counsel then submitted that the plaintiff is entitled to either a refund of the purchase price of the said vehicle or a replacement.

I agree with the submission of counsel for the plaintiff and indeed interlocutory Judgment has been passed in this regard. I accordingly find that the plaintiff is entitled to refund of US\$2,200 being the price of the said motor vehicle or its equivalent in Uganda Shillings at the ruling rate of Bank of Uganda on the date of payment.

Remedy 2: General damages for breach of contract.

Counsel for the plaintiff prays for the sum of Ug.Shs.5,000,000/= under this head. He argues that his client has spent a lot of time, money and expressed a lot of inconvenience trying to trace this car for 4 years. Counsel referred me to the case of;

Robbialac Paints (U) Ltd. VKB construction Ltd. [1976] HCB 45.

Where SAIED Ag. Judge (as he then was) held,

“...that substantial physical inconvenience, or even inconvenience that is not strictly physical, and discomfort caused by a breach of contract will entitled the plaintiff to damages...”

No case was cited to me on damages awarded in similar cases such as this. The plaintiff testified that he is a businessman who imports cars for use as special hire taxis at Hotel Equatoria in Kampala.

However, no evidence was raised as to the income was passed. Clearly the motor vehicle was for business and would have earned some income.

Taking into account the vagaries of business and taxation I find that damages at shs.1,00,000/= per year for 4 years is fair. I accordingly award Shs.4,000,000/= as general damages to the plaintiff.

Remedy 3: Refund of missing goods in the motor vehicle valued at US\$1150.

This is a claim for special damages which must be claimed specially and strictly proved. Counsel for the plaintiff however submitted that strict proof need not always mean proof supported by documentary evidence. In this regard he referred me to the case of;

Sylvan Kakugu -Vs- Tropical Africa Bank Civil Suit No. 1 of 2001.

In that case the Hon. Lady Justice Faith Mwandha held,

"...in the case of Kyambadde -Vs- Mpigi District Adm. [1983] HCB 44 and Senyakazane -Vs- Attorney General [1984] HCB it was held that special damages must be claimed specifically and strictly proved but need not to be supported by documentary evidence in all cases. It was further held that where no evidence is led to prove special damages the claim should be disallowed... In the instant case the plaintiff specifically pleaded the special damages and he proved them specifically..."

In other words in some cases special damages may be proved on the balance of probability.

In this case there was no documentary evidence of these items. The evidence of the plaintiff was that the items were packed in the motor vehicle that went missing. The receipts are said have been packed in the items in the motor vehicles for customs valuation purposes.

It is fairly well known that the business community used to pack items in vehicles they bought from the U. A. E. until the revenue authorities recently banned the practice. It is perceivable that this also was done in this case. The value is also quite small. The onus to rebut this evidence would have been on the defendant which was not done. On the balance of probability I find that the plaintiff has proved the case for the items of US\$1,150 and is entitled to a refund of the said money.

Remedy 4: Interest on remedies 1 and 3.

Counsel for the plaintiff has prayed for interest at rate of 22% from the date of cause of action till payment in full.

I would however grant a round figure of 20% from the date of cause of action until payment in full.

Remedy 5: Costs of the suit.

The plaintiff has prayed for costs of the suit. As a successful party I accordingly also grant costs of this suit.

Geoffrey Kiryabwire

JUDGE

23/11/2005