THE REPUBLIC OF UGANDA

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

HCT-00-CC-CS-0501-2006 AND HCT-00-CC-CS-0759-2006

AKUGOBA BODA BODA TRANSPORT
DEVELOPMENT SERVICES LTD ::::::::::::::::::::::::: PLAINTIFF

VERSUS

SUN AUTO COMPANY LTD ::::::::::::::::::: DEFENDANT/PLAINTIFF

VERSUS

HAJJI SWAIBU KIZITO ::::::::::::::::::::::::::: DEFENDANT

Cases cited:

1. *Solomon –Vs- Solomon & Co. Ltd [1897] AC 22.*

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

J U D G M E N T:

Akugoba Boda Boda Transport Development Services Ltd, herein after conveniently referred to as ‘Akugoba’ where the context allows, is a Limited Liability company. It sued the defendant, Sun Auto Company Ltd, also a Limited liability company, for specific performance by way of delivery of registration number plates for 20 motorcycles, recovery of a certificate of title for land, recovery of one motor vehicle, general damages, interest and costs of the suit.

In its written statement of defence, Sun Auto Company denied dealing with Akugoba. It claimed that it had dealt with a one Hajji Swaibu Kizito in his individual capacity, which Hajji Kizito executed the sale agreement and offered his own property as security for the debt.

As the hearing came to a close, it transpired that Sun Auto Company had indeed instituted a separate suit against Hajji Swaibu Kizito which suit was founded on the same facts. In that suit, HCCS No. 759/2006, Sun Auto Company claims a sum of Shs.26,160,000= being the balance due to it out of the sale of 20 motorcycles, the subject matter also in **HCCS No. 501 of 2006.** In order to save Court's time and because the issues in both cases revolve around who the correct parties to the contract were, both counsel proposed, and Court accepted the proposal, that the two suits be consolidated. Hence this judgment.

No point of agreement was generated at the Scheduling Conference. Three issues were framed for Court's determination in **HCCS No. 501/2006:**

1. Whether the plaintiff and the defendant entered into any contract.
2. The terms of the contract, if any.
3. Whether the plaintiff is entitled to the reliefs sought.

I will answer the same in the context of both suits.

Representations:

Mr. Musoke Suleiman for the plaintiff.

Mr. Kiboneka Richard for the defendant.

First, whether the plaintiff (AKUGOBA) and the defendant (Sun Auto Company Ltd) entered into any contract.

A contract is simply an agreement enforceable at law. An essential feature of a contract is a promise by one party to another to do or for bear from doing certain specified acts. One party has to make an offer to the other, who in turn must accept the offer, thus formulating an agreement. The agreement may be oral or written. Where complaints of breach are raised, as herein, and it so happens that the parties had reduced their agreement to writing, Courts resort to the said written agreements as an embodiment of the conditions and terms of the contract. And this brings me now to the parol evidence rule.

The parol evidence rule is to the effect that evidence cannot be admitted (or that even if admitted, it cannot be used) to add to, vary or contradict a written instrument. In relation to written contracts, the rule means that where a contract has been reduced to writing, neither party, can rely on evidence of terms alleged to have been agreed, which is extrinsic document, i.e. not contained in it. This rule is fundamental in interpretation of contracts.

In the instant case, the basis of the relationship between the parties is a Sale Agreement, D. Exh. 1. The opening paragraph runs as follows:

> ***"On behalf of M/S Sun Auto Company, I have transacted (sold) the above mentioned motor vehicle/cycle to Mr/Mrs/Miss Hajji Swaibu Kizito c/o Akugoba boda boda Transport Ltd."***

In law a company and its Managing Director are totally different and distinct persons. It is settled law that a company is a distinct legal entity, separate from such persons as may be members of it, and having legal rights and duties. It may enter into contracts in its own right, own property, pay taxes, employ people and be liable for torts and crimes. These are fundamental attributes of corporate personality recognized long ago in **Solomon –Vs- Solomon & Co. Ltd [1897] AC 22.**

From the agreements, the company, Akugoba, was used merely as the address of Hajji Swaibu Kizito. As such, the presumption is that it had no interest in the transaction. It cannot incur liability under it or take advantage of it. The reason is simple: no stranger to the consideration can take advantage of a contract although made for his benefit. Only a person who is a party to the contract can sue on it.

At the hearing, DW1 Mulinde testified that the person his company transacted business with was Hajji Swaibu Kizito. He did not know him or his company before the incident. He asked for motorcycles on credit and he gave him 20 of them. As security for the payment, Kizito surrendered to the seller his own certificate of title in respect of land described as Block 205 Plot 78 Kyaggwe. On top of that he surrendered to the seller his own vehicle, a Pajero Reg. No. UAF 238 D. The two documents are indeed in the names of Hajji Swaibu Kizito.

From the evidence, Court is satisfied that the transaction was between Sun Auto Company Ltd and Hajji Swaibu Kizito. Akugoba was used as Kizito's contact address. In all these circumstances, Court makes a finding that the contract was between those two persons, Sun Auto Company Ltd and Hajji Swaibu Kizito.

I now turn to the terms of the contract.

Both parties agree that the contract document is what was tendered in evidence, D. Exh.1. It is a standard form agreement, with terms and conditions printed in clear green ink. They are:

1. The buyer shall gain full ownership after paying the outstanding balance and the interest thereof B (iii) and meet the transfer costs in his names.
2. In the event of not fulfilling the outstanding balance the company shall re-posess the above mentioned vehicle/cycle i.e. after the elapse of the agreed period and sell it to off set the balance and interest; plus the costs incurred in recovery and the balance shall be given to the buyer.
3. In case of motor cars, ………………………………………………………..”

The balance stated in the document is Shs.31, 600,000=; the date of delivery is 18/7/2005; and the agreed period 5 months only. It is argued for the plaintiff in HCCS No. 501/2006 that the terms were already written, favouring the defendant company. For as long as the terms were clear, not ambiguous, and were duly discussed, I do not see any problem with them to write home about.

It is further argued that the parties agreed that the defendant would deliver the number plates of the motor cycles within a period of 14 days. No such promise appears in the Sale Agreement. It is trite that where the contract is in writing, its terms can be ascertained by means of documentary evidence. Where they are clear, a Court must give them effect. It is therefore not the duty of the Court to re-write an expressly stated contract for the parties. As long as both parties address themselves to the terms of the contract and agree to be bound by them, the duty of the Court is to construe the agreement as it was when it was executed.

From the evidence of DW1 Mulinde and the Sale Agreement itself, the parties agreed that the buyer would gain full ownership of the cycles after paying the outstanding balance. Evidence about the purported giving out of the number plates within 14 days is extrinsic document. It is inadmissible, and even if admitted, it cannot be used to add to, vary or contradict a written instrument, D. Exh. 1.

I now turn to remedies.

From the evidence of DW1 Mulinde, which I found truthful, after the negotiations, Hajji Swaibu Kizito agreed to take the motor cycles on credit. DW1 agreed. Hajji Kizito issued his company’s

post-dated cheques to the seller and on top of the cheques pledged his own land and vehicle as security for payment. The goods were specific, ascertained and in a deliverable state. They were for a stated price.

Section 19 of the Sale of Goods Act provides that where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buy when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both are post poned. This is subject to the intention of the parties. In view of this Court's finding that the agreement of the parties was that the buyer gains full ownership after paying the outstanding balance, their intention was that property in them would not pass till then. In cases of this nature, certain factors must be considered before damages can be calculated. One of these factors is the role of the injured party following the breach: he is expected to do what he can to look after his own interest. He must in other words mitigate his loss.

From the evidence, while Hajji Kizito claims that he had agreed with Mulinde that number plates would be given to him within 14 days, which he didn't, he (Kizito) went ahead and in turn sold them to third parties without the said number plates. The unpaid for cycles could not therefore be recovered from Hajji Kizito after the contract period of 5 months. In my view, by giving Sun Auto Company Ltd the post-dated cheques which in the end bounced and by surrendering to the company his own personal property (the land title and vehicle), Hajji Kizito committed himself to pay for the cycles on demand. The company has prayed in **HCCS No. 759/2006** that it be paid a sum of Shs.26, 160,000= being the balance on the purchase price. In his evidence, DW1 Mulinde admitted receipt of some payment. He gave the outstanding balance as Shs.24,600,000= although, as stated above, the amount claimed in **HCCS No. 759/2006** is Shs.26,160,000=. PW1 Nabisalu put the figure at Shs.22, 750,000= and Hajji Kizito himself at Shs.24, 000,000=. I take the outstanding amount to be the figure admitted by Hajji Kizito. Accordingly, the sum of Shs.24, 000,000= is decreed to M/S Sun Auto Company Ltd as against Hajji Swaibu Kizito. The decretal sum shall attract interest at the commercial rate of 25% per annum from the date of judgment till payment in full. Given that Hajji Swaibu Kizito has himself parted with custody of the suit cycles, M/S Sun Auto Company Ltd shall maintain custody of Hajji Swaibu Kizito's certificate of title and the vehicle pending payment. In default, the same shall be sold in execution to recover the amount due and the balance, if any, shall be given to the judgment-debtor.

In the final result, judgment is entered for the plaintiff in HCCS No. 0759-2006 against the defendant therein on the terms stated herein above with costs as prayed. HCCS No. 0501-2006 is dismissed with no order as to costs. Upon being paid the decretal amount and costs, M/S Sun Auto Company Ltd shall release the 20 number plates to the judgment debtor.

I so order.

Yorokamu Bamwine
J U D G E
27/07/2006

Order: This judgment shall be delivered on my behalf by the Registrar of this Court on the due date.

Yorokamu Bamwine
J U D G E
27/07/2006