

The Managing Director of the plaintiff company Mr. Jean Pierre Legueux testified that the defendant took six buses from them but failed to pay for them. Ultimately three of the six buses were returned but three were
5 withheld of the value of US\$ 159,300.

Counsel for the plaintiff submitted that the plaintiff company suffered inconvenience and had to borrow money to fill their financial gap. Mr. Legueux testified that they did not meet their financial projections on the
10 sale but had not computed the value. He however testified that they had to take an overdraft in Uganda shillings with interest at 18% p.a.

Counsel for the plaintiff referred me to the case of **The Motor Mart & Exchange (Finance) Ltd vs Hiralal Mohanlal Gandhi & Another**
15 **(1963) EA 657** -Court of Appeal Kenya (CAK), where it was held that a hire purchase company should recover its actual damages and that should be assessed according to realities and not fiction. This should include recovery of money advanced with interest at a reasonable rate up to the time the hiring was terminated less payments/installments made. She also
20 prayed for interest and costs.

I have considered the pleadings in this case, the evidence adduced and submissions of counsel. The buses in question are the subject of a hire purchase agreement. The buses were registered under Kenyan Registration
25 numbers and taken away. Only three were returned, the whereabouts of the other three are not known.

Mr. Legueux testified that the US\$ 159,300 was outstanding on the three buses for which interlocutory judgment was given. The plaintiff prayed in
30 the alternative for the return of the buses. That is not practicable as the whereabouts of the buses re unknown. I therefore confirm the interlocutory judgment of US\$ 159,300. The agreement (Exhibit P.1.) provides in

handwritten form an interest of 12% p.a. I so award interest at 12% p.a. from January 2011 until payment in full.

5 As to general damages, counsel for the plaintiff submitted that US\$ 30,000 would suffice. This figure was not supported in evidence. The court however in its discretion awards US\$ 16,000 with interest at 4% p.a. from the date of this judgment until payment in full.

10 I award the plaintiff the costs of this suit. The judgment is effective against the first and second defendants only as the third did not sign the guarantee.

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Geoffrey Kiryabwire

15 **JUDGE**

23/05/2011.