

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

CIVIL SUIT NUMBER 335 OF 2010

OTAOK CHARLES)..... PLAINTIFF

VERSES

EQUITY BANK UGANDA LTD.)..... DEFENDANT

BEFORE HON. JUSTICE CHRISTOPHER MADRAMA

JUDGMENT

The plaintiff filed this action against the defendants for breach of contract, general damages for loss of business in the sum of **Uganda shillings 80,640,000/=** and for costs of the suit. The plaintiff asserts in the plaint that in May 2008 he applied for a loan facility from Uganda Micro Finance limited for the purposes of purchasing a vehicle to run a taxi business. On the 19th of May, 2008 Uganda Michael Finance Limited offered to the plaintiff a micro leasing facility loan of **Uganda shillings 23,000,000/=** and by a letter dated 14th of June, 2008, Uganda Micro finance limited notified Al Malik Brothers Motors limited to release the motor vehicle to the plaintiff. The plaintiff executed a sale agreement dated 14th of June, 2008 with the motor vehicle supplier for the purchase of motor vehicle registration number UAK 060R for a total consideration of **Uganda shillings 25,000,000/=**. The plaintiff took possession of the motor vehicle and began to use it for his taxi business.

The plaintiff further alleges that the plaintiff paid his loan instalments as and when they fell due until 5th of October, 2009 when for unknown reasons the motor vehicle was impounded by the defendant. The plaintiff other alleges that the vehicle was improperly sold off at **Uganda shillings 9,000,000/=** on the 6th of October, 2009. And the money was banked on his account. Thereafter the plaintiff protested against wrongful impounding an improper sale of the motor vehicle in two letters dated 8th of October and 28th of November, 2009. The plaintiff alleges that the defendant breached the micro leasing facility agreement. Firstly the defendant did not give notice to the plaintiff, wrongfully impounded the vehicle and wrongfully sold it. The vehicle was sold without a valuation report. The defendant did not advertise the vehicle for sale. That the defendant did not have any right to impound and sell the vehicle. He contends that as a result of the irregular sale of the motor vehicle, the plaintiff suffered loss of future income in the sum of **Uganda shillings 80,640,000/=**. The plaintiff therefore seeks a declaration that the defendant breached the micro leasing agreement. A declaration that the defendant is not entitled to recover any outstanding loan amounts from the plaintiff as the result of its illegal and wrongful acts.

General damages for breach of contract and interest at the rate of 24% per annum from the 6th of October, 2009 till payment in full and costs of the suit.

On the other hand the defendant avers that the plaintiff consistently failed to pay his loan instalments as and when they fell due. The plaintiff was at all material times aware or notified of the sale of the leased motor vehicle by the defendant but ignored, failed or neglected to respond. The defendant duly valued the property before sale.

On the other hand the defendant counterclaimed against the plaintiff for the recovery of **Uganda shillings 8,112,971/=** on account of interest. The plaintiff breached the terms of the lease agreements and occasioned loss of interest as a result thereof to the defendant.

At the scheduling conference the parties admitted some facts and documents. Counsels then opted to file witness statements and cross examine on them. The plaintiff called one witness and the defendant too called one witness. The plaintiff testified as PW1 and closed his case. DW1 was Dennis Kyewalabye, a legal officer of the defendant.

Both parties filed a written submission after cross examination on the witness statements. The facts appear in the judgment herein below.

Plaintiff's written submissions.

Under the finance lease arrangement the defendant advanced the plaintiff **Uganda shillings 23,000,000/=** to which the plaintiff added **Uganda shillings 2,000,000/=** which amount was used to purchase a motor vehicle. The plaintiff defaulted in payments and the motor vehicle was repossessed by the defendant on 5 October 2009 and sold on 6th October 2009 at **Uganda shillings 9,000,000/=**. The vehicle was sold by private treaty under an arrangement where no notice was given to the plaintiff or the notice that was issued was violated. At the time of sale **Uganda shillings 13,766,366/=** was outstanding.

The plaintiff's claim is inter alia for a declaration that the defendant breached the micro leasing agreement. The plaintiff also claims compensation for losses occasioned.

Issues

- 1. Whether the defendant unlawfully repossessed and sold the vehicle on account of not having given notice to the plaintiff before doing so.**
- 2. What remedies are available to the parties?**

Whether the defendant unlawfully repossessed and sold the vehicle on account of not having given notice to the plaintiff before doing so.

Learned counsel first sought to define what a finance lease is. He contended that a finance lease is an arrangement where "the lesser receives lease payments to cover its ownership costs. The lessee is responsible for maintenance, insurance, and tax. Some leases are conditional sales or

hire purchase agreements. Learned counsel went on to define and describe different kinds of leases. He contended that in the resolution of the first issue, under normal finance leases, a lessor exclusively meets the costs of purchase of the asset. In the plaintiffs case however both parties contributed to the purchase. Secondly counsel contended that the lease could not be cancelled. He referred to clause 2 (b) of the agreement. Clause 3 (d) and (e) provided that time is of essence in relation to obligations of the lessee. It envisaged the possibility of delayed payments and provided remedies therefore by way of payment of interest. The plaintiff acknowledges that the plaintiff made occasional default in payment, the plaintiff continued to make payments throughout the duration of the lease prior to cancellation. Additional interest consequent upon the delayed payment was always computed and debited to the plaintiffs account.

Furthermore clause 3 (f) is to the effect that even where the asset has sustained a damage that takes it out of service, the lessee has to continue to pay their rentals for such period the asset may be out of service.. The remedy available to the lessor as agreed upon by the parties upon the occurrence of any of the termination events is for the lessor to terminate and take possession of the asset but not to sell. This included an intention of the parties to use the taking of possession to compel the lessee to comply with his obligations under the contract. The sudden and hastily effected sale went beyond the contractually agreed terms and was a manifest breach of contract. The breach of contract had the effect to irretrievably cancelling the contract with the effect of releasing the lessee from his obligations and also affording him right to legal redress. The duty of the lessee to perform his obligations under the agreement would only continue to subsist if the lessor terminated and took possession, but not as it happened he exceeded the contractual limits and sold the property. Counsel submitted that the agreement did not permit the lessor to sell. He referred to the case of **Magezi and Another vs. Ruparelia [2005] 2 EA 156** where the Supreme Court held that the intention of the parties to an agreement is to be determined from the words used in the agreement. Counsel submitted that the wording of the master lease agreement upon the occurrence of the termination event is clear and unambiguous and does not provide for sale. Accordingly the sale was contrary to the contractual terms and extinguished the lessor's rights and entitlements and also halted lessee's obligations. Counsel contended that the breach by the lessor went to the heart of the contract and it was a repudiatory breach. He relied on the case of **Ronald Kasibante vs. Shell Uganda limited [2008] HCB 162** where Bamwine J held that breach of contract is the breaking of the obligation which the contract imposes, which confers a right of action for damages on the injured party. It entitles him to treat the contract as discharged if the other party renounces the contract or makes its performance impossible. In the case the defendant had improperly terminated the plaintiffs licence to operate a petrol station citing performance below the agreed capacity. The court found that the plaintiff could not regularise his financial position when he was hounded off the premises. Counsel submitted that in this particular case the plaintiff could not regularise his financial position and be able to meet his obligations under the contract when permanently hounded out of possession of the motor vehicle. The defendant thereby renounced the contract and made it impossible to perform. Furthermore

the sale of the vehicle in the manner it was made the performance of the contract by the plaintiff impossible and for which the defendant is liable.

Counsel contended that under the contract the only way the lessor could have carried out any lawful sale would have been to take out foreclosure proceedings. The contract did not provide for sale without recourse to court and secondly because it is a fact not in dispute that the asset was bought using funds jointly contributed by both parties. Learned counsel further submitted that the lessor had the right to act without notice of termination upon the occurrence of a termination event. Once the lessor waived his right not to give notice, and gave notice, he had to act according to the terms of the notice. Learned counsel contended that the defendant was estopped by the doctrine of estoppels from acting otherwise than according to the terms of the notice. He relied on section 114 Evidence Act.

Counsel further contended that it is trite law that where the financing agreement does not expressly provided for sale upon default, the financing party can only sell the asset upon successfully foreclosing the other party's rights under the contract. This involves court action. Upon impounding the vehicle, it was not advertised for sale. Furthermore it was sold by private treaty and did not fetch a fair price.

These omissions are an indication of bad faith on the part of the defendant. Counsel emphasised that the haste with which the whole transaction was effected leaves one with no other conclusion save that the defendant was acting in bad faith and with the intention of causing loss and damage to the plaintiff. This is evidenced by the impounding of the vehicle valuing it and selling it all within the same day.

Counsel submitted that the duty imposed on the lessor under a finance leasing agreement who is acting in good faith is to advertise the asset in a leading newspaper, to value the asset and to accept only those bids that exceed the forced sale value of the asset. Learned counsel submitted that this duty was articulated in the case of **Cuckmere Bricks Company Ltd and Another versus Mutual Finance [1971] 2 ALL ER page 633**. Learned counsel further referred to the case of **Co-operative Bank Ltd (in liquidation) versus Shell Kasese Services Ltd and others High Court civil suit number 140/2005**, the decision of Justice Egonda-Ntende as he then was when he held that the duty of the mortgagee is to offer sale in an open and transparent manner. Acting otherwise attests to bad faith. The defendant cannot successfully claim to have acted in good faith. Learned counsel further referred to the case of **Yosiya vs. Musa Umar Ameriliwalia and another (1956) EACA 71** where Briggs Ag Vice President found that if the mortgagee acts in secret and conceals what he is doing from the mortgagor, he may expose himself to some suspicion of not having acted in good faith. In **Akright Projects Ltd versus Executive Property Holdings High Court civil suit miscellaneous application number 142 of 2009**, the court set aside the sale which was conducted by private treaty when there was no notice to the bidders. In **Greenland bank Ltd (in liquidation) versus Wasswa Birigwa and another High Court civil suit number 26 of 2004**, the court refused to accept as proper a sale inter alia

because it was conducted by private treaty, without the benefit of competition that a public auction provides.

Counsel submitted that it was sufficient to prove that the impounding and sale was unlawful and contrary to the contractually agreed terms. Such a flawed sale of the asset is contrary to the continued payment of rent by the lessee. In any case the lessee was no longer renting the asset from the lessor since the property had been sold to third parties. In conclusion counsel submitted that the impounding and sale without a notice period was unlawful and outside the contractually agreed terms and was executed in bad faith.

Written submissions of the defendant on issue 1

Counsel for the defendant submitted that the brief facts are that on the 19th of May, 2008, the plaintiff obtained a micro leasing facility from the defendant's predecessor in title Uganda Micro finance limited. The facility involved the defendant purchasing a vehicle which the plaintiff was to rent for two years after which it will be re delivered to the defendant. The plaintiff was required to pay Uganda shillings 1,517,480/= every month. The plaintiff consequently defaulted on its obligations with the effect that the defendant exercise its right to repossess the vehicle, it later sold and recovered part of the amount due. The plaintiff was unhappy with the state of affairs and commenced the action in this case. The defendant counter claimed for the amount outstanding up to the date the facility was written off.

Whether the defendant unlawfully repossessed and sold the vehicle on account of not having given notice to the plaintiff before doing so?

Counsel referred to the definition of a financial lease in **Black's Law Dictionary** as a fixed term lease used by a business to finance the Capital Equipment. In the case of **On Demand Information (In Administrative Receivership) and another versus Michael Gerson (Finance) PLC and another [2000] 4 ALL ER 734**, a finance lease was defined as a lease that actually involved payment by lessee to a lessor of the full costs of the asset together with a return on the finance provided by the lessor. The Lessee has substantially all the risks and rewards associated with the ownership of the assets, other than the legal title. The legal title may or may not be eventually transferred.

Counsel contended that in a practical sense a financial lease is characterised by the lessee selecting the equipment to be supplied by the manufacturer or dealer that the lessor (a finance company) provides the funds, acquires title to the equipment and allows the lessee to use it for all of its expected useful life. During the period of the lease, it is the lessee who bears the risk of loss, destruction and depreciation of the equipment (fair wear and tear excepted). The regular rental payments during the rental period are calculated to enable the lessor amortise its capital outlay and to make a profit from its finance charges.

Learned counsel contended that a financial lease is different from a mortgage, hire-priced case arrangement, operational lease etc. Unlike in a hire purchase arrangement in which upon payment of a number of agreed instalments, ownership passes to the buyer, in a financial lease, payment of rent does not in any way entitle the lessee to the ownership/or proprietary interest or at all. Counsel submitted that the logic is that in this transaction the lessor's reversionary right constitutes its security interest in the leased equipment. Counsel referred to clause 2 (c) and (d) of the master lease agreement.

The facility required the plaintiff to pay back a fixed sum every month. It is an agreed fact that the plaintiff consistently defaulted on his obligations. Under clause 8 (I) of the master lease agreement, failure to pay rentals or any other sum constitutes an event of termination. Furthermore under clause 10 (a), it amounts to a repudiation or fundamental breach of the agreement. Consequently the defendant was entitled to terminate with or without notice the lease of the vehicle and take possession thereof. Counsel submitted that it is an agreed fact that no final demand notice was ever issued to the plaintiff by the defendant. So the issue of violation of the notice terms by the defendant does not arise.

As far as the right to cancel the master lease agreement is concerned, the only question and indeed the gist of the issue is whether the defendant could in accordance with the agreement, terminate without notice upon failure by the defendant to pay rentals or other sums in accordance with the terms of the agreement.

Learned counsel submitted that the issue is whether it was lawful for the defendant to repossess and sell the vehicle without notice to the plaintiff and not whether the sale was authorised by the master lease agreement. i.e. whether it was done properly etc. However because counsel for the plaintiff delved into other ancillary matters counsel would respond to the same.

On the issue of sale upon repossession, counsel submitted that in accordance with clause 2 of the master lease agreement, the vehicle belonged to the defendant. During lease period up to the point of termination, the vehicle remained registered in the names of the defendant as demonstrated by exhibit P8 the vehicle logbook. The plaintiff was merely a bailee and moreover during the term of the lease and not upon its termination. Upon termination of the lease the plaintiff had no further right or claim in respect of the vehicle. What the defendant did after repossession of the vehicle was not the plaintiff's business.

Secondly the reversionary right in the vehicle was the security of the defendant. Upon repossession, the first remedy available to the defendant was the sale of the vehicle to recover its capital together with any profits. As to whether the sale was authorised by the master lease agreement, counsel submitted that the right of sale was implicit in the master lease agreement. This is because the master lease agreement provided that the vehicle belonged to the defendant at all material times. It is envisaged that the defendant would enforce its rights upon repossession to realise its capital and any profits. Clauses 7 (a) and 10 (a) (iii) contemplated such a sale.

Furthermore there was no provision in the master lease agreement against sale by the defendant upon repossession. Consequently the plaintiffs submissions lack merit and should be rejected.

Counsel further contended that it was baseless for the plaintiff to submit that sale of the vehicle without recourse to court was unlawful or improper. Counsel contended that there was no provision in the master lease agreement or a provision of law that required the defendant to seek a remedy in court to realise its own property.

As far as want of advertisements of the vehicle prior to the sale is concerned, counsel submitted that a finance leasing arrangement and a mortgage are completely different. The defendant was not required under the master lease agreement to advertise the vehicle before sale. The defendant only had a duty to exercise diligence and get the best price possible which it did obtain without advertisement and after a professional valuation exercise. Furthermore the plaintiff has not adduced any evidence to show that advertisement prior to sale would have yielded a higher price or even a contrary valuation to indicate that the vehicle was of a higher value than what it was valued at by the defendant.

Furthermore as to the argument that the plaintiff paid an extra 2,000,000/= for the purchase of the vehicle and that apparently made the transaction irrevocable, clause 8 of the master lease agreement and other clauses are clear that the master lease agreement could be terminated as it was. Counsel further contended that the issue of this "extra sum" was never mentioned in the facility documents. The offer letter in clause 6, the agreement document has itself, the master lease agreement and the schedule thereof, the debit mandates and standing instructions covering the lease period. The sale agreement is clearly not an agreement document and is between the plaintiff and a third-party and not binding on the defendant. The amounts advanced to the plaintiff was what was deemed to be sufficient to purchase a vehicle and any other payments made were done on the plaintiffs own accord of which the defendant is not and should not be concerned. Counsel prayed that the court finds that the defendant lawfully repossessed and sold the suit vehicle.

Plaintiff's submission on remedies

Remedies

Learned counsel for the plaintiffs submitted that the defendant's omissions and commissions deprived the plaintiff of his source of livelihood. He contended that the impounding and sale of the leased asset was unlawful and did not accord with the contractual terms. It did not accord with the common law procedural requirements and was irregular in all respects. Consequently the plaintiff suffered serious financial loss as spelled out in paragraph 6 of the witness statement. Counsel submitted that to date the plaintiff has not been able to cope. The plaintiff continues to leave as an economic fugitive due to the economic conditions. Consequently counsel prayed that the court grants remedies in the following terms:

- (a) A declaration issues that the defendant breached the micro leasing agreement between the parties.
- (b) The plaintiff is paid Uganda shillings 80,640,000/= for loss of earnings as contained in paragraph 6 of the plaintiffs witness statement.
- (c) A declaration issues that the defendant is not entitled to recover any outstanding loan amounts from the plaintiff as a result of its illegal and wrongful act of impounding and wrongful disposal of the plaintiff's motor vehicle.
- (d) The defendant pays Uganda shillings 30,000,000/= as general damages for breach of contract.
- (e) The court awards interest at the rate of 24% per annum from the date of sale of the vehicle to payment in full;
- (f) Costs of the suit are provided for.

Written submissions of the defendant on remedies available to the parties

On available remedies, learned counsel for the defendant contended that the plaintiffs claim for 80,640,000/= cannot be awarded. Counsel contended that loss of future income cannot be pleaded and proved as special damages as the plaintiff did in this case. He contended that special damages are expenses incurred before the action is commenced and hence the requirement for a special plea and proof of the same. Loss of future income cannot be claimed as special damages and this claim must on that ground collapse. Counsel relied on the statement of law in the case of **Simon Lobia vs. Mutwalibi Mukungu [2000] KALR 598 (Court of Appeal)** which decision was confirmed on appeal to the Supreme Court in **Mutwalibi Mukungu vs. Simon Lobia [2002] KALR 228**.

As far as other remedies sought by the plaintiff are concerned, the defendants counsel contended that the plaintiff is bound by an indemnity clause, clause 7 of the master lease agreement. Even if the plaintiff were to succeed, the success would only be academic. Counsel relied on **Oyester International Ltd versus Air Guide Services Ltd High Court civil suit number 424 of 1994**.

Counsel further submitted that the plaintiff's evidence in support of his claims was wanting. It contains deliberate falsehoods in that the amount of money charged as taxi fare in 2005 is the same as that charged in 2011 at the peak of the inflation. Secondly that the comprehensive insurance policy that covered the vehicle would also cover loss of profits whereas not.

Counsel submitted that the plaintiff exhibited inexperience about the nature of the taxi business. He provided no material on which general damages of the magnitude he prayed for would be assessed. Counsel contended that the position of law is that evidence of such material on which assessment is based should be presented but the plaintiff presented nothing. The plaintiff testified that although the vehicle was constantly making money which was to be used to pay rent and other sums, he did not do so because he had other businesses that he was funding with the same money. No wonder he defaulted on his obligations. The same plaintiff is praying for a

declaration that the defendant be stopped from collecting any further monies from him in respect of this transaction. Counsel contended that a man on account of his indiscipline who refused to pay rent to the defendant should not be granted such a declaration as it would be a mockery of justice.

In the premises the defendants counsel prayed for an order compelling the plaintiff to pay the sums outstanding up to the time when the facility was written off. This is based on clauses 8 and 10 of the master lease agreement. In clause 8 notwithstanding repossession, the lessee would remain liable to perform all obligations under the master lease agreement. Counsel prayed that the defendant is awarded Uganda shillings 9,416,201/=

Secondly the defendant prayed for interest from the above sum up the bank rate from November 2009 to date. The defendant also prayed that the court dismisses the plaintiff's suit with costs and grants the orders sought in the counterclaim.

In rejoinder learned counsel for the plaintiff submitted as follows:

He contended that whereas paragraph 1.8 of the supplementary joint scheduling memorandum provides that no final notice to the plaintiff recalling and/or terminating the facility was issued, the word "final" does not mean that there was no notice that was issued. Counsel relied on the letter dated 5th of October 2009 in which the defendant given notice of seven days to the plaintiff and was exhibited as exhibit D4. The case of the plaintiff is that having issued this notice giving us seven days, the defender and violated the terms of the notice. Secondly the defendant is estopped from relying on the provision which gives it the right to terminate without notice because it issued the notice.

As far as the irrevocable nature of the transaction is concerned, the plaintiffs' counsel contended that the defendant failed to respond to the specific issue raised about the meaning of the particular clauses cited. The cancellation and breach manifested when the defendant proceeded to sell in the manner that it did. Counsel submitted that the fact that the plaintiff contributed Uganda shillings 2,000,000/= put him in a different category from that of other lessees. He contended that the court has a duty to pass judgement based on the circumstances of each individual case. The defendants attempt not to recognise the lessee's contribution towards the purchase of the asset is escapist and insincere and a departure from the admitted document in the joint scheduling memorandum.

As far as the submission that the master lease agreement authorised the defendant to sell is concerned, counsel submitted that under clause 7 (a), the contemplated power of sale arises out of breach of intellectual property rights. Secondly under clause 10 (a) (iii), a sale envisaged is a lawful sale pursuant to applicable law and procedure. The plaintiff's position is that the clause giving the right of termination does not provide for sale. Counsel contended that in case there was any ambiguity in the provisions of the contract, it should be construed unfavourably to the author of the agreement. In **Ahmed Ibrahim Bholm vs. Car General Ltd, the Supreme Court**

held that the operation of the doctrine is to the effect that the construction of the document least favourable to the person putting it forward should be adopted against him and normally this means the author of the document. Counsel submitted that the defendant relies on the master lease agreement as authorising it to sell the vehicle. The plaintiff's argument is to the effect that the clauses of the agreement do not give a power of sale upon the occurrence of a termination event. The contra proferentum rule can therefore be invoked.

Learned counsel reiterated his submissions on the need for foreclosure proceedings in court and the duty to obtain the best price by advertisement/public auction. Counsel further reiterated his submissions on the issue of unlawfulness and impropriety of the impounding and sale which amounted to breach of the substantive provisions of the agreement between the parties.

As far as remedies are concerned, the plaintiff did not plead the sum of 80,640,000/= as special damages. Furthermore the plaintiff did not present a claim as special damages. In **Robert Coussens vs. Attorney General civil appeal number 8 of 1999 the Supreme Court of Uganda** held that pre-trial loss of earnings may be claimed and proved as special damages while post-trial loss should be claimed as general damages. Assessment of which is left to the discretion of the trial court based on relevant facts as proved. Pre-trial loss of earnings may be left to the trial court for assessment together with post-trial loss as part of general damages. Counsel submitted that the vehicle was impounded on the 5th and sold on 6 October 2009. The case was filed on 10 September 2010 and trial commenced on 11 July 2012. The better part of that would therefore fall in the pre-trial loss category. The award of damages is based on the principle of restitutio in integrum. The plaintiff gave an account of how the figure rose from loss of income.

Counsel disagreed that the remedy sought by the plaintiff would stand nullified by the indemnity clause of the master lease agreement (clause 7). The clause may only be invoked where the lessor suffers penalties subsequent upon the lessee violating intellectual property or environmental laws none of which has occurred in this matter.

Judgment

I have carefully considered the evidence on record and the written submissions of counsels.

The primary issue is whether the defendant unlawfully repossessed and sold the vehicle on account of not having given notice to the plaintiff before doing so. The second issue is consequential upon the finding of the court on the first issue. There are sub issues which will be dealt with in the course of this judgement. One of them is whether the defendant could continue charging interest after termination of the lease agreement by repossession and sale. Perhaps the issue should be whether the repossession and sale of the leased vehicle terminated the contract.

The defendant's predecessor in title offered to the plaintiff in a letter dated 19th of May 2008 a micro leasing facility for the purchase of a Toyota Hiace. It was estimated that the asset costs

approximately **Uganda shillings 23,000,000/=** the plaintiff's predecessor in title was supposed to finance the full costs of the motor vehicle subject to a cash deposit of 20 per cent of the amount financed by the plaintiff which deposit would be offset against the final rental payments. The payment of an arrangement fee of 3% of the amount financed, payment of insurance and inspection fees. The offer letter indicated that the plaintiff would be required to pay 24 monthly payments of **Uganda shillings 1,517,480 =**. The calculated to rent will be subject to the standard VAT 18%. The other terms of the offer letter were that the vehicle would at all times be comprehensively insured with a reputable insurer by the plaintiff. The plaintiff would be responsible for maintaining the motor vehicle in a good working condition. The plaintiff could claim wear and tear allowances applicable to the motor vehicle and the finance charges against taxable profits of the lease period. The parties were required to execute a master lease and schedule documentation providing for debit mandates and standing instructions covering the lease period. The vehicle would be availed for the inspection of the lender every six months.

Subsequently according to exhibit D2 the parties executed a master lease agreement dated 18th of June 2008. The lease equipment was described in the schedule which was not attached to exhibit D2. The defendant's predecessor in title Uganda Micro Finance Limited was described as the lessor while was the plaintiff the lessee. Clause 2 (A) provided that the lessor shall lease and the lessee shall take on the lease equipment for the lease term, subject to the terms and conditions of the agreement. In clause 2 (B) a lessor confirmed and acknowledged that each release schedule was a full pay out non-cancellable agreement and that the lessee has no right to surrender the equipment during the lease term. In clause (C) the ownership of the equipment was to remind all times during the lease term with the lessor. Clause 2 (D) provided that the lessee acknowledged confirmed and declared that it held the equipment as a mere bailee of the lessor without any proprietary right, title or interest in the equipment during the lease term other than the right to quiet possession and use of the equipment subject to the provision of the agreement as long as no default has occurred and is continuing. Clause 8 of the lease agreement provided for termination events and specifically that in the event of the occurrence of the termination events without prejudice to any other right or remedy which the lessor may have, the lessor may with or without notice terminate the leasing of the equipment under the agreement and take possession of them. And that notwithstanding repossession by the lessor, the lessee was to remain liable to perform all obligations under the agreement.

It is an agreed fact that the defendant's predecessor in title advanced to the plaintiff **Uganda shillings 23,000,000/=** to purchase the vehicle. The motor vehicle was thereafter purchased at the consideration of **Uganda shillings 25,000,000/=**. It was at all material times registered in the names of the defendant and its logbook kept by the defendant until the sale of the vehicle on 6 October 2009. During the years 2008 and 2009 the plaintiff consistently defaulted on his monthly repayments thereby breaching the facility which resulted into the repossession and sale of the vehicle by the defendant. There was no final notice to the plaintiff recalling and/or terminating the facility prior to the possession of the vehicle and its sale by the defendant. At the

time the vehicle was repossessed and sold, **Uganda shillings 13,766,366/=** was the outstanding loan amount. The motor vehicle was repossessed on 5 October 2009 and sold the next day on 6 October 2009. Before sale valuation was carried out on behalf of the defendant by Professional Valuers and Consult Engineers upon repossession on 5 October 2009 and prior to the sale on 6 October 2009. The vehicle was sold for **Uganda shillings 9,000,000/=** by private treaty by Messieurs Armstrong Auctioneers. The defendant did not realise the entire sum outstanding after the sale of the motor vehicle and a balance continued to accrue interest until it was written off by the defendant on 18 December 2010.

Additionally the plaintiff filed a witness statement which was confirmed on oath and upon which he was cross examined. In the witness statement the plaintiff added that they topped up **Uganda shillings 23,000,000/=** with a sum of **2,000,000/=** to purchase the lease equipment. The plaintiff used to ply between Kampala and Mbale and used to earn about 90,000/=. The vehicle would only rest on Sundays when it would go for service of the vehicle. He further contended that a taxi plying a long distance would have a lifespan of about two years and thereafter would do city service only. A city service taxi called earn up to 50,000/= shillings per day. After four years it could be sold for about Uganda shillings 6,000,000/=. At the time the vehicle was impounded the plaintiff and used it for 16 months with effect from 14 June 2008 when he purchased the taxi applicant 5th of October 2009 when it was impounded.

He testified that the impounding of the taxi had caused him financial loss which he calculated based on the projections of how much a taxi earns according to his testimony. On cross examination the plaintiff who testified as PW1 reiterated his witness statement. He added that he had been plying on the relevant route for about four years. The taxi drivers were supposed to bring a fixed amount per day which is the amount he testified about. He admitted that though he was paying for the facility, he was not paying on time because he had some other commitments. As far as accidents are concerned, the vehicle was under a comprehensive insurance cover. He confirmed that after using it for four years it could be sold for the amount he testified about.

Dennis Kyewalabye, a Legal Officer of the defendant testified as DW 1. His witness statement confirms the agreed facts. The plaintiff was indebted to the defendant in the sum of Uganda shillings 13,766,366/=. On 6 October 2009 the vehicle was sold by private treaty for Uganda shillings 9,000,000/= leaving the plaintiff indebted to the defendant in the sum of Uganda shillings 4,766,366/=. In accordance with the terms of the facility extended to the plaintiff, the outstanding balance continued to attract interest until it was written off in accordance with the Central Bank guidelines on 18 December 2010. Consequently a sum of Uganda shillings 9,461,201/= is claimed by way of counterclaim against the plaintiff. Failure to pay the bank puts the bank out of its money and it is just and lawful that interest in the sum is ordered by the court. The failure or refusal by the plaintiff to pay the bank the sums due strained and inconvenienced the bank and particularly compelled the bank to acquire the services of bailiffs to track and repossess the vehicle. The defendant also had to acquire services of lawyers in order to recover its money. On cross examination DW 1 on clause 8 (ii) of the master lease agreement which

reads "the lessee shall fail to perform or observe any of the undertakings, agreements or obligations in this agreement on its part to be performed (other than in respect of the payment of rental and other sums to which clause 8, (i) applies) or contained in any acquisition document entered into in respect of the equipment and, in the case of a breach capable of being remedied, shall fail to remedy such breach within 10 business days of the occurrence of such breach;" testified that there was a written demand exhibit D4. He further testified that it depended on the circumstances of the parties for the determination of the question of whether there was a breach capable of being remedied under the above clause. Failure to pay rental payments is a breach capable of being remedied. He further agreed that there is an obligation to issue a notice under the clause when required. Finally that the loan has been written off and the defendant could still claim for the money though the loan had been written off. On re-examination on clause 8 (i) of the master lease agreement, he testified that the plaintiff had failed to pay.

It's an agreed fact that the plaintiff defaulted in the loan repayments. It is further agreed that there was no final notice to the plaintiff recalling and/or terminating the facility prior to the possession of the vehicle and its sale by the defendant. The issue therefore revolves around the legality of the impounding and repossession and sale of the vehicle by the defendant. There was some controversy about the agreed fact 1.8 that there was no final notice. The parties admitted exhibit D4. Exhibit D4 is a letter dated 5th of October 2009 demanding for outstanding arrears amounting to **Uganda shillings 7,148,465/=**. The letter reads as follows:

"YOU ARE HEREBY NOTIFIED that pursuant to the lease application executed between yourself and Equity Bank Uganda Ltd (successor in title Uganda Micro Finance limited under section 112 of the Financial Institutions Act, 2004) (Jinja Road Branch) on 19 June 2008, you are in arrears of Uganda shillings 7,148,565/=. And we hereby demand that you pay all your outstanding arrears which amount to the sum above-mentioned, within seven days from the date of this demand note.

Please note that the outstanding arrears herein demanded continue to attract a monthly interest of 6% till payment in full.

Your failure to comply herewith may cause grave consequences, which may include but will not be limited to recalling your credit facility on grounds of default.

PLEASE TO SETTLE ALL YOUR ARREARS IMMEDIATELY."

Endorsement on the letter shows that it was served on the wife of the plaintiff and another gentleman. Agreed fact number 1.8 in the supplementary joint scheduling memorandum when put in context means that no final notice recalling or terminating the facility was given. This means that the impounding of the vehicle on 5 October 2009 and its sale on 6 October 2009 in accordance with agreed fact 1.1, 1.2, and 1.3 of the joint supplementary scheduling memorandum is a matter of interpretation. Pursuant to the admission of exhibit D4 being the demand for outstanding arrears, agreed fact 1.8 means that the vehicle was impounded and sold

without notice/final notice notwithstanding exhibit D4 which was of no effect. On the question of fact and it is established that the defendant wrote to the plaintiff demanding for payment of arrears of **7,148,465/=** on 5 October 2009. On the same day the vehicle was impounded and the next day which is 6 October 2009 the vehicle was sold.

The plaintiff submitted that the defendant was estopped from relying on the provision giving it a right to take possession of the vehicle without notice. This is because it did its letter dated 5th of October 2009 give the plaintiff seven days' notice from the date of the demand note to clear outstanding arrears failure for which it would take action which may include recalling the credit facility on grounds of default. The defendant nonetheless on the same day impounded the vehicle. Can it assert that it had the right to impound the vehicle without notice? The right to take possession of the vehicle is provided for by clause 8 of the master lease agreement upon the occurrence of the termination events which are indicated under clause 8. The lease termination events include default to pay any rental or other sum that is due. As I take it, it is an agreed fact that the plaintiff defaulted in his instalment payments. Particularly the plaintiff relies on exhibit D4 which shows that he was in a default position being in arrears of **7,148,565/= Uganda shillings** by 5 October 2009.

The right of the defendant to take possession without notice is provided for under clause 8 in the following words:

"Then in the event of any of the above as stated in clause 8 (i) to (xii) occurring (without prejudice to any other right or remedy which the lessor may have) the lessor may with or without notice terminate the leasing of the equipment under this agreement and take possession of them. Notwithstanding repossession the lessee would remain liable to perform all obligations under the agreement."

By writing the letter of 5 October 2009, the defendant represented to the plaintiff that it could clear its outstanding rentals within seven days from 5 October 2009. It is quite strange that on the same day and without evidence of any writing other than a valuation report showing that the vehicle was valued on 5 October 2009, the defendant proceeded to impound the vehicle and sell it the next day. No evidence was adduced as to which event occurred first. Was the letter served before the vehicle was impounded? Or was the vehicle impounded before the letter was served? The events on the face of the record occurred on the same day. Before a resolution of the question it is necessary to peruse the pleadings of the parties. Paragraph 5 of the plaint avers that the defendant for some unknown reason impounded the vehicle on 5 October 2009. The particulars of the irregular manner of disposal of the vehicle under paragraph 8 of the plaint include the failure to notify the plaintiff of the impounding and sale of the vehicle. Paragraph 9 avers that the defendant did not have any colour of right in the impounding and selling the motor vehicle without notice. Paragraph 4 (a) of the defendant's written statement of defence avers that the defendant consistently failed to pay his loan instalments when they fell due according to the demand notice annexure "A". Annexure "A" is the letter dated 5th of October 2009 being a

demand for outstanding arrears. Secondly paragraph 4 (d) of the defendant's written statement of defence avers that the plaintiff was at all material times aware or notified of the sale of the leased motor vehicle by the defendant but ignored, failed or neglected to respond. It is therefore the defendant's pleading that it gave notice to the plaintiff. The notice annexed is annexure "A" namely exhibit D4.

Counsel for the plaintiff submitted persuasively that the defendant is bound by the terms of the notice being the letter dated 5th of October 2009 annexure "A" and exhibit D4. First of all the defendant is bound by its own pleading under order 6 rules 7 of the Civil Procedure Rules which provides:

"No pleading shall, not being a petition or application, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with a previous pleading of the party pleading that pleading."

The defendant has attempted to raise a new allegation of fact that it was entitled and in fact it indeed impounded the vehicle without notice. This is inconsistent with its averment that it impounded the vehicle and sold it with notice. The defendant did not deem it fit to amend its written statement of defence to change the allegation of fact that it notified the plaintiff of the impounding/sale of the vehicle. Be that as it may, it is a question of fact that the vehicle was impounded and sold without notice. The narrow question was therefore whether the defendant had the right to impound and sell the vehicle the way it did. This question would be determined on the issue of whether the doctrine of estoppels is applicable and barred the defendant from asserting its rights under clause 8 of the master lease agreement to impound or take possession of the vehicle and sell it without notice. To be more particular, the right of the defendant under clause 8 to take possession of the vehicle without notice is not contested. Section 114 of the Evidence Act imports the doctrine of estoppels and provides as follows:

"When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing."

The defendant cannot deny that it gave notice to the plaintiff in exhibit D4. The defendant cannot deny that in that notice it gave the plaintiff seven days within which to clear its outstanding arrears of rent. In the notice the defendant also represented to the plaintiff that failure to comply with the notice may pose grave consequences. In other words, the defendant represented to the plaintiff that it would not take any grave measures if the plaintiff settled its indebtedness within seven days. In fact it would not recall the loan within the seven days within which the plaintiff was supposed to clear its outstanding arrears. Having represented to the plaintiff that it would wait for seven days within which the plaintiff would put its house in order, the defendant cannot

represent in court that it did not give notice and impounded and sold the vehicle without notice by exercising its rights under clause 8 of the master lease agreement. However estoppels relates to the terms of the notice and not the option of whether to give notice or not. Secondly it is a rule of evidence.

Specifically clause 8 of the master lease agreement gives the defendant an option whether to give notice to terminate or not. This option is found in the words: **“the lessor may with or without notice terminate the leasing of equipment under this agreement and take possession of them.”** The defendant had the option whether to terminate the lease with notice or without notice. Exhibit D4 was a precursor of the exercise of a right of termination or repossession or sale as the case may be. By making the demand notice embodied in exhibit D4, the Defendant theoretically had put the plaintiff on notice that the credit facility may be “recalled” (a term which means that the credit facility may be terminated). The notice was to the effect that if the plaintiff did not pay its outstanding arrears, the equipment lease would be terminated. Termination of the leased equipment brings the contract to an end and entitles the lessor to demand for payment of the "termination sum". The termination sum is specified in clause 10 of the master lease agreement. The defendant therefore exercised one of the options under clause 8 of the master lease agreement, which is to give notice to pay any outstanding arrears failure of which the lease of the equipment would be terminated. The remaining question of fact is that on the same day as the notice, the lease was terminated by repossession and subsequent sale of the vehicle the next day.

Clause 8 by giving an option whether to terminate with or without notice, applies the doctrine of election. According to Words and Phrases legally defined, 3rd edition 1 volume 2 D – J page 147, the term "election" or the doctrine of election is defined in the case of **Scarf versus Jardine (1882) 7 App Cas 361** per Lord Blackburn:

"Where a party in his own mind has thought that he would choose one of two remedies, even though he has written it down on a memorandum or has indicated it in some other way, that alone will not bind him; but so soon and as he had not only determined to follow one of his remedies but has communicated it to the other side in such a way as to lead the opposite party to believe that he had made that choice, he has completed his election and can go no further; and whether he intended it or not, if he has done an unequivocal act – I mean an act which would be justifiable if he had elected one way and would not be justifiable if he had elected the other way – the fact of his having done that unequivocal act to the knowledge of the persons concerned is an election."

The defendant elected to give notice to the defendant. It was not just a demand notice; it carried with it a threat if the plaintiff did not comply with the demand, to recall the credit facility. In other words to terminate the leasing of the equipment and recover any sums which are due to the defendant. This included the sale of the equipment and other remedies open to the defendant

under the master lease agreement. There is an overlap of the doctrines of election, waiver and estoppels. The doctrine of waiver extends to estoppels and has the same effect as election. In the case of **Kamins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd [1970] 2 All ER 871** at 894 per Lord Diplock:

"The second type of waiver which debars a person from raising a particular defence to a claim against him, arises when he either agrees with the claimant not to raise the particular defence or so conducts himself as to be stopped from raising it" (see WORDS AND PHRASES legally defined third edition R – Z page 405)

The Defendant conducted itself in such a way by writing a notice of demand communicating what would happen after seven days that it could not turn around and rely on clause 8 to repossess the vehicle on the first day of the notice dated 5th of October 2009. In the premises I am persuaded by the plaintiffs argument that the defendant is estopped from raising clause 8 which gives it the right to opt either to repossess with or without notice. The defendant elected to give notice and is bound by the terms of the notice. Secondly exhibit D4 which is the notice dated 5th of October 2009 is signed by the defendants Credit Manager secondly by the Business Growth and Development Manager. On the other hand, there is no evidence as to who authorised the impounding and sale of the lease equipment on the same day as the demand notice.

In the premises issue number one which is whether the defendant unlawfully repossessed and sold the vehicle on account of not having given notice to the plaintiff before doing so is answered in the affirmative.

Remedies

It is an admitted fact that the plaintiff was in default in its instalment payments. It is also agreed that the contract between the parties is a finance lease. Supplementary agreed fact number 1.6 is that the vehicle was at all material times registered in the names of the defendant and its logbook kept by the defendant until its sale of the vehicle on 6 October 2009.

Firstly the plaintiff seeks a declaration that the defendant breached the Micro leasing agreement. This declaration would flow from the finding on issue number one. However, it is true that the plaintiff was also in breach of the Micro leasing agreement by failure to pay its instalment obligations as and when they fell due. Agreed fact number 1.7 in the supplementary joint case scheduling memorandum is to the effect that during the years 2008 and 2009, the plaintiff consistently defaulted on his monthly repayments thereby breaching the facility which resulted into the possession and sale of the vehicle by the defendant. The facility is governed by the master lease agreement and it is therefore an admitted fact that the plaintiff was in breach of the facility agreement which is the master lease agreement. The declaration sought by the plaintiff obscures this reality. In the premises a limited declaration will be issued. Flowing from the resolution of issue number one the court declares that the defendant did not comply with the

terms of its demand letter dated 5th of October 2009 and therefore with clause 8 of the master lease agreement as relates to the option to give notice before repossession.

The plaintiff claims Uganda shillings 80,640,000/= for loss of future earnings. The basis of the plaintiff's claim is the fact that the defendant did not comply with the terms of its own demand letter. It is doubtful whether such a claim would arise in view of the admission of liability for being in default of instalment payments by the plaintiff in paragraph 1.7 of the supplementary joint scheduling memorandum. The liability of the parties is first of all governed by the master lease agreement.

The plaintiffs' counsel advanced an interesting argument that the master lease agreement was a non-cancellable agreement in so far as under clause 2 (B) it provides that "the lessee confirms and acknowledges that each lease schedule is a full pay out non-cancellable agreement and that the lessee has no right to surrender the equipment during the lease term." I have carefully considered the arguments which have been set out in the written submissions of the plaintiff's counsel. The clause makes it clear that it deals with the lessee. It provides that the lessee has no right to surrender the equipment during the lease term. This provision is made without prejudice to the right of the defendant to take possession of the equipment and exercise their rights under the master lease agreement. Secondly learned counsel advanced the argument that the plaintiff contributed **Uganda shillings 2,000,000/=** towards the purchase of the equipment. On the basis of this contribution, learned counsel contends that the master lease agreement is distinguishable because of the contribution of the plaintiff from other finance leases. Consequently, his conclusion was that the defendant did not have the right of sale as it did in the circumstances of the case. I find this argument difficult to justify by simply reading the provisions of the master lease agreement. Clause 2 (C) of the master lease agreement provides that "ownership of the equipment shall at all times during the lease term remain in the lessor".

Secondly clause 8 provides that the lease may be terminated with or without notice. It cannot be argued that the lease was not terminated. What can be argued is that the determination of the lease was not in accordance with clause 8. As to the consequences of that will be handled after resolution of the central question of what remedies are available to the plaintiff and the defendant in the circumstances. Thirdly payment of Uganda shillings 2,000,000/= for the purchase of the lease equipment did not in itself convert the master lease agreement into a hire purchase agreement. This is because the parties continued to adhere to the terms of the master lease agreement by the plaintiff continuing to pay rentals after the purchase of the equipment. The terms of the agreement had been binding on the parties and obligations and rights of the parties are determined by the terms thereof. Furthermore, failure to adhere to the terms of the notice by the defendant did not absolve the plaintiff of his obligations under the lease or absolve him of his liability for default in payment of rentals. The agreement was not avoided as far as obligation that had arisen up to termination is concerned by failure to abide by the notice terms issued by the defendant.

Where there has been a termination event, and the lease has been terminated the common law is that the damages recoverable is for any breach up to the time of the termination event. This was considered in the case of **Financings Ltd versus Baldock [1963] 1 All ER 440**. The principle is stated by Lord Denning at page 455 as follows:

"It seems to me that, when an agreement of hiring is terminated by virtue of a power contained in it and the owner retakes the vehicle, he can recover damages for any breach up to the date of termination, but not for any breach thereafter, I see no difference in this respect between the letting of the vehicle on hire and the letting of land on a lease. If a lessor, under a proviso for entry, re-enters on the ground of non-payment of rent or of disrepair, he gets the arrears of rent up to the date of re-entry and damages for want of repair at the date, but he does not get damages for loss of rent thereafter or for breaches of repair thereafter. In this and many hire purchase agreements, the owners have sought to avoid the general principle by inserting a "minimum payment" clause such as we see in clause (11) (a) here,... The owners by such a clause are really seeking, on an early termination of the hiring, to recover damages for loss of future rentals, when they have not lost any. They have no right to future rentals after they have terminated the agreement and got the vehicle back. ..."

The general principle is that termination of an agreement brings to an end the obligations of the parties up to the date of the termination subject to recovery of damages for breaches or injuries that have occurred up to that point. Consequently, the narrow issue in this matter is based on the method of termination and not the right of termination. The plaintiff has not indicated that it was willing to pay the arrears which were due to the defendant. It was in default anyway. Secondly the ownership of the vehicle remained with the defendant. Wrongful termination in the circumstances is procedural. This is because the plaintiff was already in a breach of the master lease agreement and the defendant was entitled to terminate the lease agreement which it did albeit not in accordance with the notice. The principle stated by Lord Denning in **Financings Ltd versus Baldock** (supra) is repeated in **Lombard North Central plc versus Butterworth [1987] 1 All ER 267 by Lord Mustill at page 271**. His Lordship confirms the proposition that where a breach goes to the root of the contract, the injured party may elect to put an end to the contract. Thereupon both sides are relieved from those obligations which remain unperformed. Upon the election the injured party is entitled to compensation for any breaches which occurred before the contract was terminated. The general law summarised in the above case is that:

"a term of the contract prescribing what damages are to be recoverable when the contract is terminated for a breach of condition is open to being struck down as a penalty, if it is not a genuine covenanted pre-estimate of the damage".

In the premises the application of the doctrine of estoppels to the plaintiff's case in issue number one only leads to the conclusion that the defendant did not terminate the contract in accordance with clause 8 after giving notice in its letter dated 5th of October 2009. The defendant on the

same day of the notice took possession of the vehicle and sold it the next day. In effect the defendant terminated the contract without regard to its own notice dated 5th of October 2009. In those circumstances, the plaintiff would only be entitled to general damages for wrongful termination. Such damages cannot extend to a claim for loss of future earnings in view of the fact that the plaintiff was in default on account of being in arrears of the instalment payment to the tune of Uganda shillings 7,148,565/=. Clause 8 of the master lease agreement entitled the defendant to terminate the contract for failure to pay their rentals. Exhibit D4 which is the demand letter dated 5th of October 2009 in the last paragraph thereof provides that failure by the plaintiff to comply with a demand letter may pose grave consequences which may include but not be limited to recalling the credit facility on grounds of default.

The letter did not rule out taking possession of the equipment. Counsel for the plaintiff agrees that possession of the equipment does not have to lead to termination of the master lease agreement or sale of the equipment. So the notice per se could not exclude taking possession as a form of enforcing compliance with the rental obligations of the plaintiff stipulated in the demand notice. The taking of possession under clause 8 is, in the words of the clause, "without prejudice to any other right or remedy which the lessor may have". "Any other right or remedy" of the defendant pursuant to taking of possession included recalling the loan. However, when the defendant went ahead to sell the equipment, it thereby cancelled the lease contrary to its own notice. Before concluding this matter, the vehicle was impounded on the same day as the demand notice. The plaintiff could not therefore have had much expectation about the terms of the demand notice. In the premises, the plaintiff is only entitled to general damages for breach of the terms of the notice by the defendant. There is no evidence whatsoever that the plaintiff was making arrangements or made arrangements to clear its outstanding arrears. In other words, the plaintiff remained in default without showing a commitment to pay. In the premises the claim for Uganda shillings 80,640,000/= being loss of earnings is disallowed. In lieu thereof the plaintiff is awarded general damages for breach of the seven days' notice by the defendant and in lieu of seven days' notice of **Uganda shillings 5,000,000/=**.

Concerning the declaration sought that the defendant is not entitled to recover any outstanding loan amounts from the plaintiff, the following orders shall ensue. Having sold the vehicle at the cost above the outstanding arrears of rentals, the defendant is only entitled to the outstanding arrears as demanded in its letter dated 5th of October 2009 exhibit D4. The outstanding arrears arise from the rentals which were due to it at the time of termination of the lease. Last but not least the defendant repossessed this vehicle and is not entitled to claim additional income or interest from the plaintiff having brought the lease to an end. In any case, the vehicle remained the property of the defendant.

Each party shall bear its own costs of the suit.

Judgment delivered in open court this 21st day of September 2012

Christopher Madrama

JUDGE

Judgment delivered in the presence of:

Bale Sadat holding brief for Ahmed Kalule for the defendant

Plaintiff in court

Plaintiff's Counsel absent

Charles Okuni Court Clerk

Catherine Sheila Abamu, Legal Research Assistant.

Christopher Madrama

JUDGE

21 September 2012