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**OBODHA BOSCO :::::::::::::::::::::::::::::::::::::: PLAINTIFF**

**NUBOCA FINANCE CO-OPERATIVE SAVINGS  
 & CREDIT SOCIETY                 : DEFENDANT**

## JUDGMENT

The defendants did not file a defence in spite of service. Interlocutory judgment was entered against the defendants by the learned Registrar of this court on the 17<sup>th</sup> September 2012. The suit was then set down for formal proof.

The plaintiff understood that he would pay about Shs. 86,400/= per week out of his estimated earnings of Shs. 250,000/= per month.

The plaintiff states that he paid by cash and cheque Shs. 2,700,000/=. The boda boda cost Shs. 2,800,000/=. He then sought accountability of his account as he had nearly cleared the loan. He testified that he had Shs. 700,000/= on his account which he believed would clear the interest on the loan and the log book of the boda boda be released to him.

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On 13<sup>th</sup> January 2012 his rider by names Beyangere Abel told him that the boda boda had been stolen and he had been beaten. This matter was reported to the police. The plaintiff further testified that he was informed by the Police Officer PC Baseke that investigations showed that the boda boda had not been stolen but was taken by the defendants for nonpayment of the loan.

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The plaintiff further testified that the defendants still have the boda boda. He further testified that the defendants told the police that he owed them Shs. 684,400/=. He also testified that he owed the defendants no more money as he had Shs. 700,000/= on his account which was sufficient to clear the loan interest with a balance due to him. The plaintiff testified that within three months he had cleared the loan.

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The plaintiff testified that he incurred expenses for treatment of his rider and loss of income. The medical costs were Shs. 900,000/= and loss of earnings of 180 days at Shs. 50,000/= per day amounting to Shs. 9,000,000/=. Total is Shs. 9,900,000/=.

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Counsel for the plaintiff submitted that the plaintiff showed that he got a loan from the defendant for a boda boda and met his obligations under the loan agreement. There is evidence that when the defendant had received a notice of default written to him is the day the boda boda was taken away from him and yet the loan was paid.

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He further submitted that the boda boda was converted and court should order its release. He also prayed for special damages as prayed for Shs. 9,900,000/=. He also prayed for Shs. 30,000,000/= as exemplary damages as deterrent against this type of behavior by the defendants. He prayed for general damages of Shs. 25,000,000/= and costs of the suit.

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I have perused the plaint and exhibits tendered in court. I have also heard the testimony of the plaintiff and the supporting submissions of his counsel.

This is a hearing for formal proof as interlocutory judgment has already been entered. That being the case the court will confirm that there has been breach of contract which has not been challenged by the defendant. I therefore in terms of the prayers in court declare that defendant did breach the loan agreement and this has not been challenged.

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I further declare that the defendant also unlawfully converted the plaintiff's motor cycle to their own use. This too is unchallenged. I further order that the defendant surrender to the plaintiff the said motor cycle Reg. No. UDT 440H and its log book bought on the 30<sup>th</sup> May 2012 or its value of Shs. 2,800,000/= within 14 days of being served with the extracted orders of this court.

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As to exemplary damages counsel for the plaintiff submitted that Shs. 30,000,000/= should be paid by the defendant as a deterrent against this type of behavior and to serve as a message to the public. I think this is excessive and court is slow to grant such damages to non public bodies. I find that evidence in this area of high handedness was not adduced in court so I shall not award it.

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As to general damages counsel for the plaintiff prayed for Shs. 25,000,000/= for psychological torture, mental anguish and embarrassment cause to his client in addition to the detention of the said boda boda. I find that figure too is excessive and grant Shs. 5,000,000/= as general damages.

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Counsel for the plaintiff also prayed for interest. I grant interest at 25% p.a. on special damages from 13<sup>th</sup> January 2012 until payment in full. Should the defendants fail to release the motor cycle as ordered then the value of the motor cycle of Shs. 2,800,000/= shall attract interest at 25%p.a. from the date of failure to release the motor cycle until payment in full.

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I award interest at 8% p.a. on general damages from date of judgment until payment in full. I also award the plaintiff costs of the suit.

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Geoffrey Kiryabwire

**JUDGE**

Date: 29/11/2012

