THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO 136 OF 2013

HON MABLE BAKEINE}.....PLAINTIFF

VERSUS

YUASA INVESTMENTS LTD}.....DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff who is an Honourable Member of Parliament of Uganda filed this action against the Defendant for recovery of special damages of Uganda shillings 50,000,000/= as monies had and received under a contract for the sale of a motor vehicle, breached by the Defendant. Alternatively the Plaintiff without prejudice prays for an order of specific performance, compelling the Defendant to deliver to the Plaintiff a functional vehicle of the make and model agreed upon. The Plaintiff also seeks general damages, and costs of the suit.

The basic facts averred in the plaint are that on 9 December 2012 the Plaintiff acting through a friend, Honourable Barnabas Tinkasimire who introduced her to the Defendant Company which is a dealer in imported used motor vehicles. The Plaintiff informed the Defendant's agents that she intended to acquire a Toyota Prado TZ 2000 model diesel engine in a sound mechanical condition fit for the status of the Plaintiff which included travelling long journeys from Kampala to the Plaintiff's district. The Defendants agents or employees informed the Plaintiff that they had a vehicle of the Plaintiffs description at a cost of **Uganda shillings 75,000,000/=.** Upon inspecting the vehicle the Plaintiff and the Defendant's agents signed a contract of sale where the Plaintiff agreed to purchase the vehicle at **Uganda shillings 68,000,000/=**. The Plaintiff made a down payment of **Uganda**

shillings 20,000,000/= on 10 December 2012. The Plaintiff left the vehicle in the custody of the Defendant for processing of the registration number and other fittings which was paid for separately. On 15 December 2012 the Plaintiff made a further payment of **Uganda 30,000,000/=** leaving a balance of **Uganda shillings 18,000,000/=** which was to be paid through to post dated cheques of **Uganda shillings 9,000,000/=** each. On the same day the Plaintiff's husband attempted to drive the motor vehicle and noted that it had no sufficient thrust power. This fact was communicated to one James, an agent of the Defendant inside the holding bond facility. Mr James advised the Plaintiff and her husband that the motor vehicle needed general service since the vehicle had been kept for over a year in the bond. With a lot of difficulty the vehicle was driven to the Shell Kibuye for general service. After the general service there was no change in the functionality of the motor vehicle and the Plaintiff called James, the Defendant's agent and informed him that the vehicle could not function properly even after service. The said James advised the Plaintiff to return the motor vehicle on 17 December 2012 which was a Monday since the Defendant could not open the bond on 16 December 2012 on Sunday. On 17 December 2012 the Plaintiff in the company of her lawyers returned the motor vehicle to the Defendant and the managing director of the Defendant acknowledged receipt of the motor vehicle. Upon negotiations it was agreed that the Defendant would fix all identified defects and upon fixing all the defects an independent engineer/mechanical expert would test the vehicle to confirm whether it was in a good condition and fit for the purpose and make a final report.

The Defendant on two separate occasions attempted to cash the post dated cheques which the Plaintiff had issued at the time of the purchase agreement but the cheques had been countermanded by the Plaintiff due to the defects. On 16 February 2013 the appointed expert from Messieurs Kavuma and Associates produced a report indicating that the car engine had knocked and required a replacement or overhaul. On 5 March 2013 the Plaintiff's lawyers wrote to the Defendants lawyers proposing the two options available in order to bring the matter to a logical conclusion. Additional meetings were held between the parties in which certain proposals were made and the Defendant rejected the proposals.

The Plaintiff avers that since 17 December 2012 the Plaintiff has been hiring a private car to enable her carry out her duties as a Member of Parliament. In the premises the Plaintiff contends that the vehicle was sold when it was in a poor mechanical condition and not fit for the purpose for which it was required and therefore the Defendant was in breach of an implied warranty as to fitness for purpose. She further pleads that she relied on the expertise of the Defendant's agents throughout the transaction.

Altogether the Plaintiff claims special damages for money had and received by the Defendant and for the hire of a motor vehicle amounting to a total of **Uganda shillings 97,300,000/=** the Plaintiff further seeks general damages and costs of the suit.

In its written statement of defence the Defendant denies that the Plaintiff is entitled to any of the remedies prayed for in the plaint. Secondly the defendant avers that Honourable Barnabas Tinkasimire is not a party to the contract between the Plaintiff and the Defendant. Secondly at no time did the Plaintiff disclose to the Defendant the purpose for which she intended to acquire the motor vehicle. Furthermore the Defendant never employed anybody called James among its sales staff. Thirdly the Defendant admits that there was a sale agreement for the purchase of the vehicle at the sum of **Uganda shillings 68,000,000/=**. When the vehicle was parked at the Defendant's bond, the Defendant fully addressed the issues raised. On 18th of December 2012 the Defendant through its lawyers wrote to the Plaintiffs lawyers and emphasised that the Defendant was willing to make good any defects to the vehicle. An independent expert issued an initial technical consultancy report dated 31st of January 2013 in which he identified the defects to the vehicle. On the basis of the report the Defendant entered into a claim settlement agreement in which the Defendant agreed to make and indeed carried out the recommended repairs. After conclusion of the repairs, the expert purported to issue a final report containing new defects. The Defendant is entitled to the balance of the purchase price.

The Defendant includes a counterclaim for **Uganda shillings 18,000,000/=** being the balance on the purchase price on the said vehicle in accordance with the terms of the sale agreement, general damages for non-acceptance of the vehicle and costs of the counterclaim. It is admitted that the sale price was **Uganda shillings 68,000,000/=** and the Plaintiff paid an initial amount of **Uganda shillings 50,000,000/=.** Thereafter the Plaintiff issued the counterclaim in which two cheques for the balance with each cheque for **Uganda shillings 9,000,000/=.** The cheques were dishonoured while the Plaintiff raised complaints about the vehicle which the counterclaimant agreed to resolve. Having resolved the complaints, the counterclaimant wrote to the Plaintiff's lawyers for the Plaintiff to collect her vehicle which request was neglected by the Plaintiff. The Defendant claims to be distressed by holding the Plaintiff's vehicle against its will owing to the Plaintiff's refusal to collect the same for which it holds the Plaintiff liable.

The Plaintiff denies having refused or neglected or accepted to take the vehicle and is willing to pick the vehicle in a sound and good mechanical condition as the Defendant refused or neglected to address the issues raised by the independent expert in the final report. Secondly Mr James is an employee or agent of the Defendant and the Defendant is estopped from denying that it held him out to be an employee when it allowed him to attend to the customers at its car bond in Nakawa and conducted the Plaintiff around.

As far as the counterclaim is concerned, the cheques were stopped pending the outcome of negotiations and the seller executing obligations of preparing and delivering the motor vehicle in a sound and good mechanical condition. The respondent to the counterclaim/Plaintiff never neglected to collect the vehicle because it has never been fully prepared as recommended by the independent expert agreed upon in the executed agreement. Even after receiving the expert report the counterclaimant was approached by the Plaintiff with a view of getting any other expert of its choice but refused to do so. Consequently the counterclaimant has no valid claim against the Plaintiff because of failure to execute its obligations and the counterclaim ought to be dismissed with costs.

The Plaintiff is represented by Chris Bakiza of Messieurs Bakiza and Company Advocates while the Defendant is represented by Paul Rutisya of Messieurs Kasirye Byaruhanga and Company Advocates.

On 11 October 2013 Counsels filed a joint scheduling memorandum agreeing to the documents. During the scheduling memorandum held on 17 October 2013 various documents were exhibited by consent from exhibits P1 up to exhibit P12. The Defendant's documents comprised of cheques drawn in favour of the Defendant dated 15th January 2013 exhibit D1 and a cheque dated 15th of February 2013 exhibit D2 both of which are for Uganda shillings 9,000,000/= each. Additionally it was agreed that the witness statements would be filed by 21 November 2013 and served on the opposite Counsel whereupon the hearing would commence on 28 January 2014. Hearing did not take place on 28 January 2014. On 29 April 2014 upon proof that the Defendants were served according to the affidavit of service filed on court record, and service of hearing notice was acknowledged by Messieurs Kasirye Byaruhanga and company advocates on 25 February 2014. Because the Defendants Counsel did not appear the matter proceeded ex parte under Order 9 rule 20 (1) of the Civil Procedure Rules.

The Plaintiff called two witnesses namely Honourable Mabel Bakeine Komugisha and Amos Bakeine. The Plaintiff’s case closed and the Defendant's case could not proceed due to absence and the Plaintiff’s Counsel addressed the court in written submissions with notice to the Defendant.

The issues addressed are:

1. Whether the Defendant is in breach of a contract of sale of the vehicle?
2. Whether the Plaintiff is entitled to the remedies sought?
3. Whether the Plaintiff is liable on the counterclaim?

Submissions of Counsel

Whether the Defendant is in breach of the contract of sale of goods?

The Plaintiff's Counsel broke the first issue into four sub issues which are: whether or not the seller's car was fit for the purpose; whether or not the Plaintiff relied

on the seller's skill and judgment; whether or not the Plaintiff fully examined the vehicle and thus accepted it and finally whether or not the Plaintiff was entitled to reject the vehicle under the circumstances or claim damages for loss incurred.

The Plaintiff's Counsel handled the first two sub issues concurrently and submitted that section 15 (a) of the Sale of Goods Act provides for the implied condition that the buyer relies on the Seller's judgment and the goods are of the description which is in the course of the seller's business to supply it is implied that it shall be fit for the purpose. Secondly where goods are bought by description from the seller who deals in goods of that description; it is an implied condition that the goods shall be of merchantable quality. The Supreme Court of Uganda in the case of **Goustar Enterprises Ltd versus John Kakas Oumo SCCA No. 8 of 2003** held that in order to succeed, "the buyer had to prove that he had relied on the seller's skill and judgment to supply the goods fit for the purpose for which the buyer bought them, since there was evidence to show that the seller in this case was a supplier of tractors for use by farmers." In that case the supply was held to be in breach of its contractual duty of supplying tractors which tractors were not fit for the particular purpose as two of the tractors were defective, one tractor failed to work, one was overheating and the second had a hydraulic problem. The buyer had made a specification for the goods he wanted and relied on the seller's skill and judgment.

Counsel submitted that in the instant case the Plaintiff had approached the Defendant who are suppliers of dealers in brand-new and used vehicles and informed them of her specifications for a Toyota Prado TZ 2000 model in good mechanical condition. The agents of the Defendant took the Plaintiff around the bond and showed her a motor vehicle that matched her description. She was then given a quotation for the vehicle and made a down payment therefore. She testified that she paid a total of **Uganda shillings 50,000,000/**= in instalments and a balance of **Uganda shillings 18,000,000/=** was paid using to post dated cheques issued to the Defendant each of which amounted to **Uganda shillings 9,000,000/=.** The Plaintiff testified as PW1. PW2 the Plaintiff's husband drove the vehicle around the parking area and realised that the vehicle had very low engine

thrust power. The duly informed the Defendant's employees who briefly checked the car and concluded that it had been packed in the same position for a long time and needed general servicing. Subsequently PW1 and PW2 testified that they took the vehicle for servicing at Shell Kibuye Petrol Station as advised but even after service the vehicle still had a very low thrust power. The Defendant was duly informed and told the Plaintiff to take the vehicle back on the next working day which was a Monday. Subsequent to a discussion between the managing director of the Defendant, the Plaintiffs lawyers and the Plaintiff and her husband the Defendant prepared an acknowledgement deed exhibit P3 and a claim settlement signed stipulating how to resolve the problem of the vehicle which claim settlement is exhibit P5. In exhibit P3 the Defendant acknowledges retaining the vehicle for correction of the defects and acknowledged receipt of Uganda shillings 50,000,000/=. The Defendant is therefore estopped from denying liability pursuant to the settlement agreement that the vehicle was not in a good mechanical condition and in essence it varied the original agreement of sale.

Secondly the parties obtained the services of an independent inspector was hired to examine the motor vehicle and furnish a technical report of the condition and make recommendations therefore. A motor vehicle inspector from Messieurs Kavuma and Associates was jointly hired on 31 January 2013 and his report is exhibit P6. The first report made is entitled "Technical Consultancy Report" and on 31 January 2013 page 2 thereof the defects on the vehicle are noted as firstly the starting mechanism; the braking system was not satisfactory; the engine lubrication oil was of an incorrect quality and the inspector recommended replacement of the starter auto assembly, as well as the engine oil. In conclusion the inspector indicated that when the recommended repairs are completed, they would road test the vehicle to verify the post repair and advise accordingly. The report further observes that the Defendant had attempted to carry out some repairs when the vehicle was in their possession at page 3 of the report. On 11 February 2013 PW3 Mr FK Kavuma went to the Defendant's premises to ascertain the post repair condition of the vehicle and discovered that as much as the starting braking system was in good working condition, the engine on being raced at between 2000 and 3000 RPM had very audible metallic knocks leading to the

conclusion that the engine was defective and required complete engine overhaul. The Plaintiff's Counsel concluded that in the premises the Defendant is in breach of its contractual duty to supply a Toyota Prado TZ 2000 model in a good mechanical condition. The vehicle was meant to convey the Plaintiff who is a woman MP from Kampala to Kibaale district and the vehicle was not fit for the purpose for which it was bought which purpose had been communicated to the Defendant. Counsel relied on the case of **Kinyanyui vs. Dobie & Co. Ltd (Kenya) [1975] EA** where the court held that communication by a buyer to the seller of the purpose for which the goods were required is sufficient to show that the buyer relied on the seller's judgment for there is no other reason why the buyer should make known his purpose to the seller. It is apparent that by allowing the vehicle for general service, the Plaintiff was relying on the seller's skill and judgment. The Defendants are reputable dealers in used motor vehicles and defaulted on their obligation to supply a vehicle to the Plaintiff as clearly specified. In conclusion the vehicle that was supplied by the Defendant was not according to the specifications and the Plaintiff relied on the Defendant's skill and judgment to her own detriment as can be seen in the preceding events where she was totally let down.

As far as sub issues (c) and (d) of issue number one is concerned, the issue is whether or not the Plaintiff fully examined the said vehicle and if so, whether or not it was accepted by the Plaintiff. The Plaintiff's Counsel submitted that under section 35 (1) and (2) of the Sale of Goods Act cap 79 the right of the buyer to examine the goods are provided for. It provides that where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. Secondly when the seller tenders delivery of goods to the buyer, he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract. The Plaintiff's Counsel further relies on section 59 to define what reasonable time is. The Plaintiff was afforded opportunity to examine the vehicle and relied on the Defendant's skill and judgment and went ahead to negotiate the

consideration and even made a down payment of **Uganda shillings 50,000,000/=** based on the belief that the car was fit for the purpose. Secondly she issued two post dated cheques as payment for the two last instalments. The opportunity for the Plaintiff to ascertain whether the delivered vehicles conformed to her specifications was offered to her when her husband PW2 tested the vehicle in the presence of the Defendant's employee. PW2 testified that he tested the vehicle and realised that it had very low thrust power when the vehicle was still at the Defendant's parking yard. The Defendant's agent/employee also checked the vehicle and advised that the defects could be resolved through a general service of the car. However the general service did not rectify the defects. Subsequently an independent motor vehicle inspector inspected the vehicle and listed the defects. The Defendant had acknowledged that the Plaintiff had rejected the vehicle pending rectification of the defects notified upon inspection. Additional assessment was supposed to follow road tests. The Plaintiff realised that the vehicle did not conform to the specification and duly communicated dissatisfaction with the vehicle to the Defendant. In the premises the Plaintiff returned the vehicle and has proved her case on the balance of probabilities.

Whether or not the Plaintiff accepted the vehicle in question?

On this issue the Plaintiff's Counsel reiterated submissions on the effect of section 35 (1) and (2) of the Sale of Goods Act cap 79. Buyer is not deemed to have accepted unless and until he has had a reasonable opportunity of examining the goods to ascertain whether they are in conformity with the contract. Under section 36 of the Sale of Goods Act, a buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller or retains the goods without intimating to the seller that he has rejected them. Generally Plaintiff's Counsel submits that the vehicle was tested and found to be faulty. He reiterates submissions that the Plaintiff to the Defendant advice and to the vehicle for general service which did not help and subsequently returned the vehicle on Monday which was the next working day and the Defendant acknowledged that

there were issues with the car that needed to be repaired and retained the vehicle. The evidence shows that the Plaintiff had not accepted the vehicle during the time of negotiating the sale agreement. By the time of the deposit of Uganda shillings 50,000,000/= the Plaintiff had not had a reasonable opportunity to inspect and ascertain whether the vehicle was in a good mechanical condition. Upon the vehicle being examined by an expert, it was found to be defective and the defects required an engine overhaul.

The Defendant's case is that the Plaintiff approached the Defendant with the intention of buying a used motor vehicle. The Plaintiff was in the company of Hon Barnabas Tinkasimire. She identified the suit vehicle Land Cruiser Prado 2004 model which was the only one of its kind available with Defendant at the time. The Plaintiff was given an opportunity to inspect and test the vehicle to ascertain whether it suited her needs. Thereafter a sale agreement was executed between the Plaintiff and the Defendant for the sale of motor vehicle Prado Reg. No. UAS 180P at an agreed purchase price of **Uganda shillings 68,000,000/=**. The Plaintiff paid leaving a balance of **Uganda shillings 18,000,000/=** which was covered by issuing two post dated cheques. The amount remains outstanding and the Defendant claims it by way of counterclaim, general damages and costs of the counterclaim. On 17 December 2012 the vehicle was returned to the Defendant's premises due to mechanical efforts. An acknowledgement deed was executed to that effect and a claim settlement agreement was made between the parties in which the Defendant undertook to resolve all the defects as discovered by examination of the car by one Francis Kavuma, an Engineer practising with Messieurs Kavuma and Associates. The complaint of the Plaintiff was addressed after which a notice dated 5th of March 2013 was sent to the Plaintiff requiring the Plaintiff to collect the vehicle and the Plaintiff to date has refused or neglected to collect her motor vehicle.

On this issue the Plaintiff's Counsel submitted that the Defendant is in breach of the agreement of sale executed between the parties and the only question was to establish what kind of breach the Defendant had committed and whether the Plaintiff is entitled to the remedies sought. According to **Black's Law Dictionary**

9th edition, a condition is a stipulation or prerequisite in a contract constituting the essence of the instrument. If a court construed a contractual term to be a condition, then its breach will entitle the party to whom it is made to be discharged from liabilities under the contract. With reference to **Kampala General Agencies (1942) Ltd versus Moody's EA Ltd [1963] EA 549** Sir Charles Newbold J A stated that "A condition in a contract of sale is an obligation the performance of which is so essential to the contract that if it is not performed the other party may fairly consider that there has been a substantial failure to perform the contract." In this particular case the Plaintiff gave her specifications for a vehicle and relied on the Defendant's skill and judgment to pay for the vehicle even before test driving it. There was an implied condition that the vehicle would be fit for the purpose for which she bought it. Under section 15 (b), (d) of the Sale of Goods Act, breach of such a condition would entitle the buyer to reject the goods as opposed to written warranty which entitles the aggrieved party to claim damages for such breach.

In the premises the Plaintiff was entitled to reject the vehicle and demand for compensation in damages for the breach.

In reply the Defendants Counsel submitted that during the scheduling conference three issues were agreed upon and are whether the Defendant is in breach of the contract of sale of the motor vehicle? Secondly whether the Plaintiff is entitled to the remedies sought? Thirdly whether the Plaintiff is liable on the counterclaim?

On the first issue or whether or not the Defendants Counsel was fit for the purpose, the Defendant's submission is that the vehicle was fit for the purpose. The Plaintiff identified and selected a used motor vehicle. By its obvious presentation this was a car that had been used before and the car that was sold was not worthy and capable of the functions it was manufactured for namely of transportation. In the case of **Bartlett versus Sydney Marcus Ltd [1965] 2 All ER 753** the Court of Appeal held that where a buyer buys a second-hand car, he should realise that the defects may appear sooner or later. In that particular case the defect appeared in the clutch which was more expensive to repair than had been anticipated. It was held by the Court of Appeal that the fact that the defect

was more expensive than had been anticipated did not mean that there had been any breach of the implied condition as to fitness for the purpose. Lord Denning MR held that on the sale of a second-hand car, it is merchantable if it is in the usable state, even though not perfect. This is very similar to the position under section 14 (1) [our section 15]. A second car is "reasonably fit for the purpose" if it is in a roadworthy condition, fit to be driven along the road in safety, even though not as perfect as a new car. A buyer should realise that when he buys a second-hand car, defects may appear sooner or later. In the absence of an express warranty, he has no redress. Even when he buys from a dealer the most that he can require is that it should be reasonably fit for the purpose of being driven along the road. The vehicle that the Plaintiff bought came up to that requirement. While mechanical work was necessary than he had anticipated but it did not mean that at the time of the sale, it was not fit for use as a car. There was no breach of an implied condition as to fitness.

Whether or not the Plaintiff relied on the seller's skill and judgment

The Defendant submits that the Plaintiff did not rely on the seller's skill and judgment for purchase of the vehicle. Fourthly the Plaintiff did not at any point disclose the purpose for which she intended to use the vehicle as averred in paragraph 4 of the Written Statement of Defence. In the circumstances no particular purpose was expressed which the car was to serve and that if any purpose was implied, it was merely the ordinary and general purpose which all cars serve of transport. Furthermore it has not been demonstrated that the Plaintiff placed reliance on the Defendant's skill and judgment as she purposely came with another person to acquire the car that is honourable Barnabas Tinkasimire in whom she placed trust for acquisition of the car.

As far as section 15 of the Sale of Goods Act is concerned, it provides that the there is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale when not specifically communicated. The Defendant's Counsel submits that there was no such communication and therefore the Defendant is not liable. The Defendants Counsel relies on **Cammell Laird and Company Ltd versus the Manganese,**

Bronze and Brass Company Ltd [1934] AC 402 Lord Macmillan held that under the equivalent section of section 15 of the Sale of Goods Act, the particular purpose must be made known as to show that the buyer relies on the seller's skill or judgment. This is not the case here.

Whether or not the Plaintiff fully examined the vehicle and thus accepted it?

On this issue the Plaintiff admitted that she was given an opportunity to examine the car but decided to let her husband PW2 who acted on her behalf, to drive the car around the Defendant's business premises. PW2 informed her that the vehicle had a low engine power and on inquiry she was informed that the car needed service and considering that it had been at the bond for a long time. The Plaintiff was aware that she was going to buy a used her which by its circumstances is an indicator of previous use. The Plaintiff was further informed that the car had spent at least a year in the bond which was an acknowledgement of the fact that the car could have some mechanical issues which were capably handled by the Defendant. In the case of **Abdulla Ali Nathoo vs. Walji Hirji [1957] 1 EA 207**, the court rightfully held that the appellant having had an opportunity of inspecting the onions before taking delivery, there was no implied warranty and the doctrine of caveat emptor applied. In that case Abdulla Ali had selected 50 bags from 100 bags. At that material point they became specific items whose condition he had the opportunity of examining. That being so the common law doctrine of caveat emptor, if applicable at all, would cover the situation. The above case is similar to the instant case because the Plaintiff identified and selected the vehicle she wanted and made it a specific good and the principle of caveat emptor applied. As the purchaser the Plaintiff is bound by actual as well as constructive knowledge of any defect in the thing purchased which is obvious or which would have discovered through the exercise of reasonable diligence. She accepted the vehicle when she drove it out of the Defendant's premises.

It is the general rule of law that there is no warranty of quality arising from a bare contract of sale of goods and where there has been no fraud, a buyer who has not obtain an express warranty, takes all risks of defects in the goods unless there are circumstances beyond the mere fact of sale from which a warranty may be

implied something that has not been established in the circumstances of the current case. In **Smith versus Marrable (1843)**, it was emphasised that in the absence of any express agreement between the parties, neither party is responsible for the condition of the property. The Plaintiff accepted the vehicle.

The Plaintiff relied on section 34 of the Sale of Goods Act for the submission that she had never accepted the car and she was not given an opportunity to examine the car. Reliance on section 34 is misconceived as the seller never delivered the goods to the Plaintiff but it was for the Plaintiff to collect the car which she clearly did. Nonetheless the Defendants Counsel contends that the Plaintiff was clearly given an opportunity to examine the car and she accepted the car and drove it out of the bond.

Furthermore the Plaintiff relied on section 35 of the Sale of Goods Act Cap 82 which deals with acceptance. The section provides that the buyer is deemed to have accepted the goods when he or she intimates to the seller that he or she has accepted them or when the goods have been delivered to him or her and that he or she does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, the buyer retains the goods without intimating to the seller that he or she has rejected them. The Defendant's counter argument to that of the Plaintiff is that the Plaintiff examined the car and accepted it by driving the vehicle out of the bond.

Whether or not the Plaintiff was entitled to reject the vehicle under the circumstances and claim for damages for loss incurred?

It is the Defendant's case that the Plaintiff is not entitled to reject the vehicle. The Plaintiff communicated dissatisfaction with the operation of the car which the Defendant agreed to remedy. The parties executed the claim settlement agreement in which the Defendant agreed to remedy all the defects as discovered by a neutral loss expert. PW3 Mr FK Kavuma was hired to inspect the car and give a report to the parties. PW3 presented the report and the Defendant duly fulfilled its part of the agreement so as to remedy the Plaintiff's grievances. By agreement PW3 was to subject the vehicle to a road test to determine the specific details as

found in his report of February 2013. Those defects were remedied and the Plaintiff was advised to pick the car which she failed to do. On three occasions the Defendant agreed to a complete engine overhaul in good faith which the Plaintiff never took up. The Plaintiff is not entitled to reject the car whose faults were resolved by the Defendant who acted in good faith at all times.

In rejoinder, the Plaintiff's Counsel reiterated submissions about the vehicle being unfit for the purpose and the fact that the Plaintiff is entitled to reject it.

As far as the sale agreement is concerned, the Plaintiff returned the vehicle citing mechanical faults and the Defendant submitted that it addressed his faults and issued a notice dated fifth of March 2013 for the Plaintiff to collect the vehicle and the Plaintiff refused to do so. The Plaintiff's version of facts is that she executed the sale agreement in total reliance on the seller's skill and judgment before even test driving the suit vehicle and even before she made the cash deposit of **Uganda shillings 50,000,000/=**. The final report of the expert after the Defendant addressed the faults shows that the vehicle had an engine knock and required a replacement or complete overhaul of the engine and this was completely rejected by the Defendant who refused any other remedy.

On the issue of whether the vehicle was fit for the purpose the Defendants Counsel relied on the fact that the vehicle was a used motor vehicle and the case of **Bartlett versus Sydney Marcus Ltd [1965] 2 All ER 753**. Particularly the holding that the repairs were more expensive than had been anticipated and that did not mean that there been a breach of the implied condition as to fitness. In rejoinder the Plaintiff's Counsel submitted that the Defendant has admitted that the defect was more expensive than had been anticipated by the Defendant. The Plaintiff's anticipation was a car fit for purpose and not defects such as the one rejected even by the Defendants. Secondly the above case had very different facts from the Plaintiff's case because in that case the claimant had purchased a second-hand Jaguar car from the Defendant car dealer. The Defendant told the claimant that the clutch was defective and required minor repairs estimated at a cost of between £2 and £3. He gave the claimant the option of either taking the car as it was and knock off £25 from the sale price or he would repair it and charge the full

price. The buyer took the vehicle as it is and it transpired that the fault required a cost of £84. The court held that the seller had brought the defect to the attention of the buyer and therefore the buyer could not assert any rights under section 14 of the Sale of Goods Act. In that case the defect was not a serious as an engine knock. Secondly the seller agreed to waive the costs of the defect. The vehicle was therefore not roadworthy and capable of the functions it was manufactured for. It was not fit for the purpose because it did not have the ability to be driven on long distances.

Counsel further relied on the decision **Beecham and Co versus Francis Howard [1921] ULR 428** where the court held that goods should be fit for the purpose that is reasonable to expect having regard to the price and other circumstances such as the nature and make of the goods. Because the engine needed a total overhaul, it was not a defect that can be waived. Even Lord Denning held in **Bartlett versus Sydney Marcus Ltd [1965] 1 WLR 1013** that a second-hand car is a reasonably fit for the purposes if it is in a roadworthy condition, fit to be driven along the road in safety. From the facts and circumstances the vehicle in question was not fit for the purpose for which it was expensively bought.

In rejoinder on the question of reliance on the Defendant's skill and judgment, the four-wheel-drive vehicle is ordinarily and generally expected to transport the owner wherever they would want to go regardless of the nature of the road whether on a long or short distance. The general expectation is endurance. In the case of **Griffiths versus Peter Conway Ltd [1939] 1 All ER 685** it was held that if the purpose of use of one good is perfectly obvious, there is no need to make known the purpose in order for this sale are to be bound to supply goods fit for the purpose. The case of **Cammell Laird versus Manganese Bronze and Brass Company Ltd [1934] AC 402** is distinguishable from the facts of the Plaintiff's case.

Counsel reiterated submissions that the Plaintiff rejected the goods upon being afforded an opportunity to inspect the goods. The Plaintiff went as far as retaining the vehicle to the Defendant's bond as an express unqualified act of non-acceptance. Upon returning the vehicle the Defendant, the parties entered into a

new understanding according to exhibit P5 entitled to claim settlement agreement which created terms that the Defendant did not fulfil.

There was no delivery of the vehicle to the Plaintiff as defined by section 1 of the Sale of Goods Act to mean a voluntary transfer of possession from one person to another. Driving the car protected for general servicing constituted reasonable opportunity to examine the vehicle and when it was not fit for the purpose the Plaintiff immediately informed the Defendant and returned the vehicle, a sign of rejection.

On the question of whether the Plaintiff was entitled to reject the vehicle and claim for damages, the Plaintiff reiterates submissions that the Defendant breached the settlement agreement under which it undertook to remedy all the defects of this suit vehicle by refusing the action of complete overhaul.

Remedies

As far as remedies are concerned, the Plaintiff seeks recovery of special damages in the amount of **Uganda shillings 50,000,000/=** as money had and received by the Defendant under a contract of sale of the motor vehicle, which contract was breached by the Defendant. According to the case of **Bank of Uganda versus Clive Mutisi and others HCCS 152/2007,** money which is paid by one person to another rightfully belongs to the person who paid where there is failure of consideration. The payment creates a quasi-contract which is an obligation not arising by but similar to contract. There is an implied promise to pay back the money. In such an action, liability is based on unjust enrichment or benefit. The doctrine is applicable whenever the Defendant has received the money which in justice and equity belongs to the Plaintiff under circumstances which render the receipt of it by the Defendant a receipt to the use of the Defendant.

In this case the Plaintiff returned the vehicle to the Defendant and the money in justice and equity received by the Defendant belongs to the Plaintiff. In the circumstances the Plaintiff's Counsel maintains that the Plaintiff is entitled to recover **Uganda shillings 50,000,000/=** from the Defendant as money had and received.

Special damages

The Plaintiff's Counsel further prays for special damages for a sum of **Uganda shillings 6,300,000/=** spent by the Plaintiff on alternative self drive car hire from 17 December 2012 after 31 December 2013 at **Uganda shillings 450,000/=** per day. The Plaintiff relies on exhibit P7 which is a cash receipt issued by Africa 1 Tours and Travel Limited Offices. The Plaintiff also seeks to recover **Uganda shillings 13, 950,000/=** spent by the Plaintiff on alternative self drive hired vehicles with effect from 1 January 2013 at **Uganda shillings 450,000** per day. PW3 proves that **Uganda shillings 13,950,000/=** was paid to Tours and Travel Agency. The Plaintiff incurred on alternative self drive car hire for the month of March 2013 **Uganda shillings 450,000/=** per day amounting to **Uganda shillings 26,550,000/=** and according to tax invoice exhibited P7. Altogether **Uganda shillings 50,000,000/=** deposited together with the other special damages of **Uganda shillings 47,300,000/=** amount to a total claim of **Uganda shillings 97,300,000/=** which ought to be awarded to the Plaintiff as special damages.

Counsel also prayed for general damages which should be at the discretion of the court. Finally the Plaintiff seeks costs which should follow the event and interest at the rate of 30% per annum from the date of judgment until payment in full.

In reply the Defendant's Counsel submitted on the question of monies had and received of Uganda shillings 50,000,000/=, the Defendant's case is that the Plaintiff is not entitled to a refund of this amount which is part payment for the value of the used motor vehicle. There was no failure of consideration and the Plaintiff is not entitled to a refund. Furthermore the contract of sale annexure A" clearly stipulates that the amount is not refundable. It is an amount paid to the seller before signing the agreement under that contract.

As far as special damages are concerned, the Plaintiff is not entitled to the amount claimed as special damages. The amount is attributed to loss, damages and inconvenience. The Plaintiff claims the amounts as the cost of hiring another vehicle to execute her duties as a Member of Parliament. This was a personal expense which the Defendant is not liable for. The execution of the Plaintiff's

duties and incidental expenses are not within the confines of the duties that the Defendant owed to the Plaintiff. The vehicle sold to the Plaintiff was available and road worthy and failure to collect it did not shift the financial burden on the Defendant.

General damages

The Plaintiff failed to demonstrate to the court that she is entitled to any general damages. Consequently the Plaintiff is not entitled to general damages as the Plaintiff has suffered no wrong or injury.

On the question of interest, the Defendants Counsel submits that it is unfounded and should be rejected moreover it is on the higher end of the scale and would be excessive if awarded in any case.

Counterclaim

Counsel for the counterclaimant submitted that the Plaintiff is liable on the counterclaim in so far as reference is made to section 27 of the Sale of Goods Act where it is provided that it is the duty of the buyer to accept and pay for the goods in accordance with the terms of the contract. The Defendant through its notice of collection dated 5th of March 2013 delivered the goods for which the Plaintiff was supposed to effect payment being a balance of **Uganda shillings 18,000,000/=.**

Furthermore under section 48 of the Sale of Goods Act where the property in the goods has passed to the buyer and the buyer refuses to pay for the goods in accordance with the terms of the contract, the seller has the remedy of suing for the price of the goods. The property effectively passed to the Plaintiff. The property passes irrespective of whether the time of payment or the time of delivery or both are postponed. The vehicle was the only car in the bond which fitted the buyers reference under section 19 (a) of the Sale of Goods Act. The property in the goods passed by the date of the sale agreement dated 10th of December 2012. In **Badri Prasad vs. The State of Madhya Pradesh And Another AIR 1966 SC 58,** it was held that when goods are specific and in a deliverable

state, the property in the goods passes to the contractor at the time when the contract is made. In the alternative, the Defendant's Counsel submits that if the court is inclined to hold that property in the goods did not pass, the Defendant is still entitled to bring an action for the price under section 48 (2) of the Sale of Goods Act as an unpaid seller.

Furthermore the Plaintiff is liable for general damages for breaching the contract in as far as she refused or neglected to pay the purchase price. Damages are defined in the case of **John Nagenda versus Sabena Belgian World Airlines [1992] KALR 11** as compensation in money for the loss of that which he would have received had the contract been performed. The purpose of general damages is to place the counterclaimant in as good the position as it would have been had the injury complained of not occurred. In the case of **Philip versus Ward [1956] 1 All ER 874** it is noted that in cases of breach of contract, where the buyer refuses to accept the goods, the normal measure of damages is the difference between the contract price and the market price. The measure of damages applicable here is that envisaged by section 50 (2) of the Sale of Goods Act cap 82, which is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract.

The Defendants Counsel further submitted that the Defendant is not in breach of the contract of sale and the Plaintiff is liable on the counterclaim for the outstanding dues to the Defendant/counterclaimant, general damages and costs of the suit.

In rejoinder on the question of remedies the Plaintiff's Counsel reiterated earlier submissions. Particularly the contract of sale was effectively varied by the settlement agreement acknowledging that the vehicle was defective.

On the question of special damages, general damages and interest the Plaintiff's Counsel reiterates submissions. The Defendant is estopped from claiming that the vehicle is available and roadworthy when it had rejected the expert's final report requiring it to be completely overhauled at frustrating all attempts to negotiate the sale to its conclusion.

Whether the Plaintiff is liable on the counterclaim?

The gist of the Defendant's submission was the property in this suit vehicle passed to the Plaintiff under section 48 of the Sale of Goods Act cap 82 and that the Defendant is entitled to the price of the goods sold under section 27 of the Sale of Goods Act. Furthermore the Defendant relies on section 19 (a) of the Sale of Goods Act to assert that at the time of signing of the sale agreement, property passed on to the Plaintiff. In rejoinder section 18 of the Sale of Goods Act provides a general rule that in the contract for the sale of specific or ascertained goods, property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. Intention is ascertained having regard to the terms of the contract, the conduct of the parties and the circumstances of the case. In the circumstances the Seller retained all documents of title as shown in clause 6 of the sale agreement. Under clauses 7 and 8 of the agreement, it was agreed that the purchaser before completion of the purchase price was not allowed to either sell the vehicle or remove it out of Uganda except with the written consent of the seller. Furthermore under clause 18 the seller had the right to impound the vehicle if the buyer failed to pay the balance of the price. The only plausible conclusion is that property was not intended to pass until full payment of the purchase price by the Plaintiff as evidenced by the conduct of the parties.

The section was interpreted in the case of **Jane Bwiriza versus John Nathan Osapil SCCA number five of 2002** where the Supreme Court of Uganda held that the general rules as to the passing of property in the goods can be modified by the intention or conduct of the parties to the sale. In that case the sale of the vehicle retained the logbook, insurance certificate and road licence to be held until payment of the full price by the buyer. The Supreme Court held that the fact that the buyer allowed the respondent to retain the logbook, the insurance certificate and the road licence shows that the intention of the parties was that the property in the vehicle would not pass at the signing of the sale agreement. By retaining the documents of title, they were meant to act as security for the payment of the balance of the purchase price and no property has passed according to the intention of the parties as shown by their conduct.

Property in the vehicle in the Plaintiff's case was not intended to pass until payment of the full purchase price and this is evidenced by the conduct of the parties.

In the alternative the Defendant's Counsel had submitted that if the court were to find that the property had not passed, the Defendant should still be entitled to bring an action for the price of the goods under section 48 (2) of the Sale of Goods Act as an unpaid Seller. That provision only applies where despite delivery, the buyer refuses/neglects to pay the price which was not the case in the Plaintiff's matter. The Plaintiff was at all material times willing and able to pay the full purchase price if and when the Defendant fulfilled its end of adhering to the terms of the settlement agreement which the Defendant breached by not rectifying all the defects of the suit vehicle and instead chose to reject the mutually agreed expert's final report. In the premises it is the Plaintiff's prayer that her earlier prayers are granted.

Judgment

I have carefully considered the pleadings of the parties together with the admitted facts and documents in the joint scheduling memorandum as well as the submissions and authorities. The basic facts of this suit are not in dispute. A resolution of the suit would primarily revolve on an interpretation of the agreed facts in light of the law.

Evidence was adduced by PW1, PW2 and PW3. The Defendant primarily relied on the facts admitted and documents relied upon in the joint scheduling memorandum which includes part of the Defendant's evidence. It therefore cannot be concluded that the Defendant did not adduce any evidence in light of the contents of the joint scheduling memorandum which gives the agreed position of the parties.

There are four agreed facts namely:

1. That there was a sale agreement for Toyota Land Cruiser Prado 2004 model at a cost of 68,000,000/= Uganda shillings.

2. There was payment of Uganda shillings 50,000,000/= and an outstanding amount of Uganda shillings 18,000,000/=.
3. The parties agreed to appoint an independent expert to examine the mechanical condition of the car.
4. The car has been at all material times in the possession of the Defendant.

Certain factual controversies agreed upon and which are disputed by the Defendant included whether the Plaintiff made known to the Defendant the purpose for which she intended to acquire the vehicle. Secondly it is in dispute whether honourable Barnabas Tinkasimire is a party to the contract between the Plaintiff and the Defendant. Thirdly the issue is whether Mr. James had been employed as a sales staff of the Defendant. Fourthly it is in dispute whether the motor vehicle was in a bad mechanical condition at the time of its delivery to the Plaintiff. Fifthly it is disputed whether it was necessary for the Plaintiff to hire independent transportation services. On the other hand the fact disputed by the Plaintiff is whether the Plaintiff never negotiated for a Land Cruiser Prado TZ 2004.

The above notwithstanding the Defendant did not produce any additional evidence other than the documents admitted for the Defendant's case namely exhibit D1 which is a cheque drawn by the Plaintiff in favour of the Defendant dated 15th of January 2013 worth Uganda shillings 9,000,000/=. Secondly a cheque dated 15th of February 2013 for Uganda shillings 9,000,000/= which was marked as exhibit D2 which cheque was in favour of the Defendant. The rest of the documents relied upon by the Defendant are also relied upon by the Plaintiff. These are exhibits P1 – P12.

I have duly reviewed the evidence. First of all apart factual controversies agreed for trial under the provisions of Order 12 rule 1 of the Civil Procedure Rules that requires the parties to identify points of agreement and disagreement, three issues for trial of the main controversy were agreed upon and are:

1. Whether the Defendant is in breach of contract?
2. Whether the Plaintiff is entitled to the remedies sought?

3. Whether the Plaintiff is liable on the counterclaim?

The two primary issues are whether the Defendant is in breach of contract on whether the Plaintiff is liable on the counterclaim. These two issues are intertwined in that where it is established that the Defendant is in breach of contract, then the counterclaim would be partially resolved. On the other hand a determination on the question of whether the Defendant is in breach of contract by necessary implication answers some of the controversies on whether the Plaintiff is liable on the counterclaim of the Defendant. For that reason issues number one and two will be considered concurrently.

Whether the Defendant is in breach of contract? Secondly whether the Plaintiff is liable on the counterclaim?

A brief summary of the evidence is that the Plaintiff approached the Defendant Company for the purchase of a used motor vehicle and an agreement of sale was executed on 10 December 2012 between the Plaintiff and the Defendant. The agreement is exhibit P1. The agreement speaks for itself. In the agreement paragraph 3 thereof the Plaintiff agreed to pay Uganda shillings 68,000,000/=. First of all, the Plaintiff agreed to pay a non-refundable down payment of Uganda shillings 20,000,000/= to the seller on or before signing the agreement. Secondly the Plaintiff agreed to pay the balance of Uganda shillings 30,000,000/= within seven days but before delivery otherwise the agreement would be null and void. Thirdly the balance of Uganda shillings 18,000,000/= was to be paid within 60 days from the date of the agreement by to post dated cheques in two equal instalments. Late payments were to attract a surcharge of 5% per month to cover fluctuations in exchange rates and administrative costs. Paragraph 4 of the agreement provides that the vehicle is sold as "as is" and "where is". In paragraph 6 it is agreed that the original registration card would be surrendered to the purchaser only after the seller has received the full sum of money owed and transferred the logbook into the names of the purchaser or his or her nominee at the purchaser's cost. In paragraph 7 it is provided that the purchase shall not sell the motor vehicle to a third party or remove it out of Uganda before completion of the balance of the purchase price except with the written consent of the seller.

In paragraph 8 it is provided that if the purchaser failed to remit the balance in time, the seller shall be at liberty to impound the vehicle at any time after the default and a daily charge of Uganda shillings 25,000/= shall be levied against the purchaser to cover the security and storage charges. Finally the agreement provided that upon impounding the vehicle, the purchaser shall be given 14 days within which to pay up all the outstanding balances together with the costs of impounding, storage and security for the vehicle.

It is an agreed fact in the joint scheduling memorandum that the seller remained in possession of the vehicle to date. Briefly the unchallenged evidence of the Plaintiff who testified as PW1 is as follows. The Plaintiff is a Member of Parliament representing Bugangaizi East County. On 9 December 2012 she went to the Defendant's premises to purchase a motor vehicle Land Cruiser Prado TZ 2000 model. She was taken around by the agents of the Defendant and negotiated the purchase price at Uganda shillings 68,000,000/= payable in instalments. On 10 December 2013 she made a down payment of Uganda shillings 20,000,000/= and executed a sale agreement exhibit P1 with the Defendant. On 15 December 2013 she made another instalment payment of Uganda shillings 30,000,000/= and another receipt was issued. The balance of Uganda shillings 18,000,000/= was to be paid in two instalments of Uganda shillings 9 million each and indeed she issued two post dated cheques in favour of the Defendant. After making the instalment payments by post dated cheques she was given the vehicle to test drive. The vehicle was driven by her husband who informed her that it had no thrust power. She duly informed the company's agent about her husband's concern whereupon he also briefly checked the vehicle and informed her that because it had been packed for a long time in the same position, it required general service. He recommended Shell petrol station whereupon the Plaintiff personally drove the vehicle to Kibuye petrol station where a complete general service was undertaken whereupon she paid **Uganda shillings 566,000/=.** However along the way she experienced that the vehicle had very low engine power. She called the agent on a specified telephone number and she was informed that she could take the vehicle back on Monday 17th of December 2012. She had no option but to stay with the vehicle until Monday when in the

company of her husband they met the managing director of the Defendant who acknowledged receipt of the vehicle and the acknowledgement was tendered in evidence as exhibit P3. Exhibit P3 is dated 17th of December 2012 and reads in part as follows:

> "... Has been left in our yard by honourable Mable Bakeine pending a response from us regarding various issues raised by her in respect of the vehicle.
>
> We further acknowledge having received part payment of the purchase price of Uganda shillings 50,000,000/= with an unpaid balance of Uganda shillings 18,000,000/= for which two post dated cheques of equal amounts were left with me.

Subsequent to the acknowledgement of the vehicle the Plaintiff's lawyers proposed to have the vehicle inspected by an independent motor vehicle inspector whereupon both parties engaged the services of Kavuma and Associates. The agreement is reflected in the claim settlement agreement dated 5th of February 2013. This agreement was exhibited as exhibit P5. The citations indicate that the Plaintiff purchased a motor vehicle with the particulars given therein. Secondly that the purchaser had paid a deposit towards the purchase price and taken possession of the vehicle whereupon she complained to the vendor as to the vehicle's mechanical condition. Thirdly the parties by mutual consent agreed to the appointment of a neutral loss adjuster to examine the vehicle and determine its defects. The settlement agreement also provides that where a certain Francis Kavuma was appointed for the purpose agreed to and he examined the vehicle and found the following defects:

(i) That the starter is noisy and requires repairs;
(ii) That the braking system is unsatisfactory and all brake pads need to be replaced; and,
(iii) That the engine oil must be replaced with Total Rubia G-6200 (SAE 40) oil as the original put by the purchaser's mechanic was defective.

It was agreed that the Defendant would resolve the above defects. It was expressly agreed that at the conclusion of the above repairs, the independent inspector/engineer shall subject the vehicle to a road test to determine whether the defects have been resolved. In paragraph 3 it is agreed that upon conclusion of the above repairs and subject to receipt of a satisfactory report from the independent inspector the purchaser shall have relinquished any and all claims that she might have against the vendor in respect of the vehicle and she shall accept the vehicle free from any claims whatsoever against the vendor.

The motor vehicle inspection report is exhibit P6. Exhibit P6 comprises of two reports. The first report is dated 31st of January 2013. It indicates that the report is based on visual/technical inspection and they are not responsible for any further defects which may be found later after dismantling or stripping the vehicle. Apparently the inspection report culminated in the settlement agreement exhibit P5 which is dated 5th of February 2013. Noteworthy is the conclusion in the inspection report which indicates that when the recommended repairs are completed, the engineers would road test the vehicle to verify the post **repair condition** and advise accordingly.

It is apparent that by the time the agreement exhibit P5 was executed on 5 February 2013 the defects recommended by the inspectors had not yet been carried out and no post repair condition had yet been verified neither was there a road test as recommended in the inspection report.

I have examined the written testimony of PW1. She testified that they agreed that the identified defects are repaired and the independent inspector/engineer would subject the vehicle to another road test to determine whether the defects were completely resolved. She testified that on 25 February 2013 the independent Engineer furnished the final report confirming that the vehicle required a complete engine overhaul or replacement. Secondly she testified that at this point the Defendant refused to cooperate upon receiving the opinion of the independent inspector/engineer. Secondly the Defendant deposited the two post dated cheques for payment but she had countermanded them since she had not got the vehicle she wanted. On the basis of the above she decided to file an

action in court. She no longer wants the motor vehicle which is in the custody of the Defendant because it has serious defects.

The final motor vehicle inspection report was admitted in evidence by agreement of the parties. The inspectors conducted another inspection of the vehicle on 11 February 2013 at the premises of the Defendant. The starter mechanism was in a very good working condition following replacement of the complete starter motor assembly. Secondly they carried out the road test and the braking system was in a good working condition. As far as the engine assembly is concerned, it had metallic knocks which were clearly audible and were as a result of wear and tear of some of the moving parts in the engine. They noted that although the engine oil was changed, it could not rectify the knocks because the damage was beyond the mere engine oil change and can only be rectified by removing the engine for a complete engine overhaul. They concluded that the metallic noise in the engine is technically referred to as a "piston slap" and is in what exists within the engine. They concluded that the engine was therefore in a defective condition and requires complete engine overhaul.

I have additionally reviewed the testimony of PW2 Mr Amos Bakeine. He primarily corroborates the testimony of PW1, the Plaintiff. He confirms that he protested to the sales agent who also tested the car after he drove it. The independent motor vehicle inspection engineer produced two reports already referred to above. He confirms that the Plaintiff requires either another car or replacement of the engine but not an overhauled engine. That the managing director of the Defendant is not willing to accept his wives proposals and the intervention of both Counsels did not help. The manager insisted that the motor vehicle be taken as it is and the Plaintiff did not agree hence the filing of this suit. PW3 Mr FK Kavuma who is the engineer who carried out the independent inspection confirmed the two reports referred to above.

In considering the first issue as to whether the Defendant is in breach of contract, I have duly considered exhibit P1 which is the sale agreement of the motor vehicle. Under the agreement paragraph 6 thereof it is clearly provided that the original registration card would be surrendered to the purchaser only after the

seller has received the full sums of money due and transferred the logbook into the names of the purchaser or her nominee. Secondly if the purchaser failed to remit the balance in time, the seller would be at liberty to impound the vehicle at any time after the default on a daily charge of Uganda shillings 25,000 shall be levied against the purchaser, the security and storage charges. Upon impounding the vehicle, the purchaser shall be given 14 days within which to pay all the outstanding balance together with the cost of impounding, storage and security to the vehicle.

Contrary to submissions of the Defendant's Counsel it is apparent that the vehicle had been sold to the Plaintiff as it is. The Defendant had the right under the agreement to impound the vehicle for purposes of realising the balance. It is further an agreed fact that out of the consideration of Uganda shillings 68,000,000/=, the Plaintiff had paid Uganda shillings 50,000,000/=. The question as far as contractual terms are concerned which is to be considered is the effect of the Plaintiff discovering that the vehicle was defective and returning the vehicle to the Defendant. The relationship between the parties drastically changed when the executed exhibit P5 which is a claim settlement agreement dated fifth of February 2013. Exhibit P5 acknowledges that after making the deposit of Uganda shillings 50,000,000/=, the Plaintiff who is the purchaser complained to the Defendant/the vendor and it was agreed that they would appoint a neutral loss adjuster/expert mechanic to examine the vehicle and determine its defects. The parties engaged the services of Mr Francis Kavuma who carried out an inspection of the vehicle and established some defects. The most important part of the agreement is found at paragraph 2 and paragraph 3 thereof which reads as follows:

> "2. At the conclusion of the above said it appears, the independent inspector/engineer shall subject the vehicle to a road test to determine whether the defects have been resolved.
>
> 3. Upon conclusion of the above repairs, and subject to receipt of a satisfactory report from the independent inspector, the purchaser shall relinquish any and all claims that she might have against the vendor in

respect of the vehicle and she shall accept the vehicle free from any claims whatsoever against the vendor."

What was being considered is whether the Defendant was liable for repair of the defects in the vehicle. The situation is slightly complicated by paragraph 1 of the agreement wherein it is provided that certain defects which are specified shall be resolved by the vendor. No agreement had been reached as to whether additional defects discovered after the road test would be rectified by the Defendant. The case in point is that the Defendant has refused the Plaintiffs request pursuant to the final report of the independent inspector after the road test carried out by the inspector and embodied in exhibit P6 that the engine is in a defective condition and requires complete engine overhaul. The first report which formed the basis of the settlement agreement was not conclusive. The conclusion of the independent inspectors which formed their preliminary opinion is as follows:

"When YUASA Investments sold the vehicle to Honourable Mrs Bakeine, it is believed that the seller was aware of the purpose for which Honourable Mrs Bakeine bought the vehicle, therefore, there was an implied condition that the vehicle sold was a reasonably fit for the purpose and apparently Mrs Honourable Bakeine paid for the vehicle with full knowledge that she would economically drive it at least for an average of five years without any major defects save the known ones i.e. wear and tear of the tyres, batteries, fan belts, bearings, etc, therefore, in our concerted opinion we advise that the seller hands over the vehicle to Honourable Mrs Bakeine the when she is satisfied that it is fit for the purpose for its purchase.

CONCLUSION

When the above recommend it repairs are completed, we shall road test the vehicle to verify the post repair condition and advise accordingly."

Exhibit P5 indicate that the parties agreed to the appointment of the motor vehicle inspector. However in the agreement of 5 February 2013 they stopped short of agreeing to do something about the final report. The only based their agreement on the finding of the engineer which was preliminary and were

supposed to await the final outcome. It is therefore my judgment that the primary question to be determined in this matter is whether the Defendant is liable for the defects established after the road test by the independent loss adjuster. It is a question of fact that the independent engineer did not only identify the defects which had been agreed upon in exhibit P5 but also established other defects after the recommendations were implemented by the Defendant namely the replacement of the starter system, repair of the braking system and replacement of the engine oil. Subsequently after road test which was clearly agreed to in paragraph 2 and 3 of the settlement agreement exhibit P5, the engineer was required to determine whether the defects have been resolved. The defects identified earlier included "pronounced abnormal metallic knocks/sound." It is quite logical and flows from the documentary evidence and the testimony of PW1, PW3 and PW2 that the repairs carried out by the Defendant did not resolve the problems in the engine. Consequently the independent engineer recommended an engine overhaul after discovery of a defective engine. Who is responsible for correcting the defects? In paragraph 3 of exhibit PE 5 the Plaintiff upon conclusion of the repairs and receipt of a satisfactory report from the independent inspector was supposed to relinquish any and all claims she might have against the vendor in respect of the vehicle.

It was the anticipation of the parties that there would be a satisfactory report from the independent engineer after implementing the recommendations of the engineer by the Defendant. Unfortunately for the parties there was no satisfactory report and therefore the claims of the Plaintiff/purchaser remained pending against the Defendant. The clear intention of the parties was for the Defendant to rectify the defects and handover the vehicle to the Plaintiff. This is reflected by the stipulation that upon a satisfactory report being made about the state of the vehicle, the Plaintiff would have no further claim against the Defendant. Now that there was no satisfactory report, what is the Plaintiff's remedy?

Both Counsels relied on the provisions of the Sale of Goods Act Cap 82 laws of Uganda on the question of whether property passed to the Plaintiff and on the

question of remedies. The Plaintiff's Counsel relied on the provisions of section 34 of the Sale of Goods Act which provides for the buyer's right to examine the goods before acceptance. Section 34 of the Sale of Goods Act provides as follows:

> 34. Buyer's right of examining the goods.
>
> (1) Where goods are delivered to the buyer which he or she has not previously examined, the buyer is not deemed to have accepted them until he or she has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.
>
> (2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, the seller is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract."

Section 34 (1) of the Sale of Goods Act is problematic because it deals with circumstances where goods are delivered to the buyer which he or she has not previously examined. In the circumstances of this case goods were viewed at the seller's premises before execution of the contract of sale. The term delivery is defined by section 1 (1) (d) of the Sale of Goods Act to mean voluntary transfer of possession from one person to another. Rules as to delivery are found under section 29 of the Sale of Goods Act. The first rule is that whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract express or implied between the parties. Subsection 2 of section 29 is particularly relevant in that it provides that in the absence of an express contract or an implication, the place of delivery is the seller's place of business if he or she has one and if not his or her residence. In this particular case the place of delivery is the seller's premises. The circumstances are that the goods were delivered to the Plaintiff after the Plaintiff had made a deposit of Uganda shillings 50,000,000/=. Subsequently the Plaintiff complained about the state of the goods and sought advice of representatives of the Defendant who advised her to take the vehicle for general service and the problems detected of low thrust power would be taken care of. The evidence is

very clear and is not controversial that after general service of the vehicle at the expense of the Plaintiff, the vehicle still had problems and the parties agreed to have an independent expert to examine the vehicle. At this stage there was no conclusion of the contract because the Plaintiff had complained about the defects in the motor vehicle and it is also clear that the Defendant undertook to rectify the defects according to the agreement exhibit P5. Subsequently the vehicle was returned to the Defendant who carried out the recommended actions to rectify the defects identified by Kavuma and Associates. Even after rectification of the listed defects, the independent inspectors established that the vehicle had some knocks which required an engine overhaul. These metallic knocks had been previously identified. It is at this point that negotiations between the parties hit a stalemate. As far as physical possession is concerned, the goods remained in the possession of the Defendant. The reason why the goods remained in the possession of the Defendant is quite easy to establish. It is because according to the testimony of PW1 and PW2 the Defendant refused to comply with the further recommendations of the inspector.

What is explicit is that the Plaintiff never took possession and therefore the goods have not been delivered to the Plaintiff. The goods remained in the possession of the Defendant. The substance of the dispute is whether it was the duty of the Defendant to overhaul the engine and whether as a consequence of failure to rectify the defects the Plaintiff rejected the goods. Before considering the contractual aspects of the dispute, the court was addressed on whether the goods were fit for the purpose and whether the Plaintiff relied on the Defendant's skill and judgment to choose the vehicle.

Under section 14 of the Sale of Goods Act it is provided that where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. The provision is inapplicable to the circumstances of the Plaintiff's case in that the Plaintiff inspected the motor vehicle before executing a contract for the purchase of the motor vehicle from the Defendant. According to **PS Atiyah on The Sale of Goods ninth edition** at page 121 it has been held that the phrase 'sale by description' must apply to all

cases where the purchaser has not seen the goods but is relying on the description alone.

The question as to whether the goods were fit for the purpose was dealt with by Counsel on the basis of the provisions of section 15 of the Sale of Goods Act which deals with conditions to be implied as to quality or fitness. Section 15 of the Sale of Goods Act has been held to apply to new goods as well as second-hand goods in the case of **Bartlett versus Sydney Marcus [1965] 1 WLR 1013**. Section 15 provides that:

> "15. Implied conditions as to quality or fitness.
>
> Subject to the provisions of this Act and of any Act in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows—
>
> (a) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply, whether the seller is the manufacturer or not, there is an implied condition that the goods shall be reasonably fit for the purpose; except that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;
>
> (b) where goods are bought by description from a seller who deals in goods of that description, whether the seller is the manufacturer or not, there is an implied condition that the goods shall be of merchantable quality; except that if the buyer has examined the goods, there shall be no implied condition as regards defects which the examination ought to have revealed;
>
> (c) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;

(d) an express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent with it.

Subsection (a) of section 15 of the Sale of Goods Act deals with a situation where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment. In such cases there is an implied condition that the goods shall be reasonably fit for the purpose. The question is whether the Plaintiff relied on the seller's skill or judgment in order to buy the goods. The evidence is that the Plaintiff was taken around the bond to identify the vehicle that matched her description or requirements. She was further advised that she needed to take the vehicle for general servicing because it experienced some problems due to having been packed for a long time (i.e. close to a year). The Plaintiff duly took the vehicle for servicing but the problems that had been detected did not go away. She was allowed to bring the vehicle back to the Defendant's parking yard whereupon an agreement was made for the vehicle to be inspected by an independent expert.

The vehicle was brought back after the Plaintiff had executed a contract exhibit P1. Exhibit P1 is the consummation of the sale agreement and expressly indicate that the vehicle was purchased for a consideration of **Uganda shillings 68,000,000/=.** The agreement was made on 10 December 2012. The Plaintiff deposited **Uganda shillings 20,000,000/=** according to exhibit P12 on 10 December 2012 the same date as the agreement. Subsequently on 15 December 2012 the Plaintiff deposited another **Uganda shillings 30,000,000/=** making a total deposit of **Uganda shillings 50,000,000/=** and leaving a balance of **Uganda shillings 18,000,000/=**. It was after payment of **Uganda shillings 50,000,000/=** that the Plaintiff took possession of the car and upon the car being driver for the first time it had low engine thrust power and the Plaintiff was advised to take it for service. It is apparent that she and her husband inspected the vehicle at the point when they were going to remove it from the Defendant's parking yard. The question is whether there was an implied warranty as to fitness of the vehicle.

Section 15 (b) of the Sale of Goods Act provides that that where goods are bought by description from the seller who deals in goods of that description, whether the seller is the manufacturer or not, there is an implied condition that the goods shall be of merchantable quality. There was no sale by description as such because the Plaintiff went and had a physical inspection of the goods but was obviously not competent to inspect it for mechanical fitness for purpose. There was some submission as to whether the Plaintiff made known to the Defendant the purpose for which the vehicle was required.

In the circumstances of this suit it would be strange to make an attempt to establish the purpose for which the Plaintiff required the vehicle. The answer in the Plaintiff's case is obvious. The vehicle was required for transportation of the Plaintiff and any other persons according to manufacturer's specifications as to capacity. It is not a case where there is a dispute as to what use the vehicle would be put to. No issue as to the conditions under which the vehicle was to operate can be imputed on the Defendant. The vehicle was meant to be fit for the purpose of transportation of persons and any goods as indicated in the log book. The log book which is attached to the agreement exhibit P1 has particulars of the vehicle and includes the year of manufacture. The log book also has the engine power in CC, seating capacity, number of wheels and the purpose/function. Furthermore it is apparent from the conduct of the parties that upon the Plaintiff and her husband realising that the vehicle had very low engine power, the Plaintiff and Defendant agreed that the Defendant would be rectify the defects. The primary question to be considered is whether the vehicle was fit for the purpose specified by the manufacturer. The reason being that the Defendant ordinarily is not the manufacturer though the question as to whether the vehicle is fit for the purpose binds a seller even if not a manufacturer as expressly provided for by section 15 (a) of the Sale of Goods Act.

No exhaustive definition of what is of merchantable quality for a vehicle has been made. In the case of **Bernstein v Pamson Motors (Golders Green) Ltd [1987] 2 All ER page 220** Rougier J thought that it was impossible to formulate a general

definition of what vehicle is of merchantable quality and the question should be left for termination on a case by case basis. He said at page 222:

> "This is the sort of dispute that has frequently come before the courts in relation to motor cars. As between the parties themselves it is a fairly simple matter of finding the facts, analysing the nature and effect of the defect, and making up one's mind. However, I was informed during his opening by Counsel for the Plaintiff that it was not merely the parties themselves who were interested in the outcome, but that the Automobile Association and Nissan, the manufacturers, had ranged themselves respectively behind the Plaintiff and the Defendants. It seems, according to what I was told, that the practical application of the concept of merchantable quality is giving a certain amount of trouble to those engaged in the motor trading world. Consequently, I was asked by both sides to use this case as a vehicle, if that is the right metaphor, for giving some more specific guidance and definition as to what makes a motor car merchantable.
>
> Couched in those terms, that is an invitation that I regret I must decline. "I very much doubt whether any all-embracing definition of a car of merchantable quality could ever be made. The original Sale of Goods Act 1893 left the phrase 'merchantable quality' undefined, merely to be understood in the ordinary commercial sense in which commercial men would interpret it. The phrase seems clearly more apt in situations where there will be a commercial resale than when the ultimate user is affected.
>
> Subsequent case law contains many definitions of merchantable quality generally, of which perhaps the most notable, certainly the most widely approved, was that of Dixon J given at first instance in Grant v Australian Knitting Mills Ltd (1933) 50 CLR 387 at 418 and approved by the Privy Council ([1936] AC 85, [1935] All ER Rep 209):
>
> > 'The goods should be in such a state that the buyer, fully acquainted with the facts, and therefore knowing what hidden defects exists and

not being limited to their apparent condition would buy them without abatement of the price obtainable for such goods if in reasonable sound order and without special terms.'"

The case law suggests that the purpose for which a good is to be put should guide the court in deciding whether the goods are of merchantable quality or fit for the purpose. As I have noted above, in this case the question of purpose cannot be in doubt. In the first report commissioned by the parties Messrs Kavuma and Associates were given instructions to establish the "General mechanical condition and also establish the cause of the engine **running sluggishly** and with **pronounced metallic knocks/sound**..." The inspectors noted from their first inspection that some repairs had been made by the Defendant possibly a month before their inspection (see exhibit P6 and letter of Messrs Kavuma and Associates dated 31st January 2013). In other words the parties agreed to have the vehicle inspected for fitness of purpose.

The question as to the implied warranty as to fitness of a second-hand car was considered in the case of **Bartlett v Sidney Marcus Ltd [1965] 2 All ER 753**. The facts of the case were that the Plaintiff was informed by the Defendant's salesman during a trial run that there was something wrong with the clutch. Subsequently the Defendant and Plaintiff estimated the costs of repairs. It was suggested to the Plaintiff what kind of repairs would be done and costs thereof. Having bought the car the Plaintiff used it for four weeks and travelled 300 miles without trouble before the vehicle developed problems. The car was then taken to a garage for repair, where it was found that the defect in the clutch was far more serious than either the Plaintiff or the Defendants' salesman had imagined and it cost more at £45 to put right. In an action against the Defendants for the cost of repairing the clutch the trial judge found that there had been a breach of the implied conditions as to fitness and merchantable quality under section 14 of the Sale of Goods Act, 1893 (in pari materia with section 15 of the Ugandan Sale of Goods Act) and awarded £45 damages for breach of warranty. On appeal on a point of law because there was no appeal on matters of fact Lord Denning MR held at 755:

> "I have always understood that the condition under s 14(2) is less stringent than the condition under s 14(1). … those two tests do not cover the whole ground. There is a considerable territory where on the one hand you cannot say that the article is "of no use" at all, and on the other hand you cannot say that it is entirely "fit for use". The article may be of some use though not entirely efficient use for the purpose. It may not be in perfect condition but yet it is in usable condition. It is then, I think, merchantable. The propeller in the Cammell Laird case was in usable condition; whereas the underpants in the Grant case were not. … It means that, on a sale of a second-hand car, it is merchantable if it is in usable condition, even though not perfect. This is very similar to the position under s 14(1). A second-hand car is "reasonably fit for the purpose" if it is in a roadworthy condition, fit to be driven along the road in safety, even though not as perfect as a new car. Applying those tests here, the car was far from perfect. It required a good deal of work to be done on it; but so do many second-hand cars. A buyer should realise that, when he buys a second-hand car, defects may appear sooner or later; and, in the absence of an express warranty, he has no redress. Even when he buys from a dealer the most that he can require is that it should be reasonably fit for the purpose of being driven along the road. This car came up to that requirement. The Plaintiff drove the car away himself. It seemed to be running smoothly. He drove it for four weeks before he put it into the garage to have the clutch repaired. Then more work was necessary than he anticipated; but that does not mean that, at the time of the sale, it was not fit for use as a car. I do not think that, on the judge's findings, there was any evidence of a breach of the implied conditions."

Lord Denning uses some useful phrases. The first is whether the vehicle is in a "usable condition" or "reasonably fit for the purpose". He further considered whether the phrase "fit for the purpose to include "In a roadworthy condition to be driven on the road safely". The facts in the above case are clearly distinguishable from the Plaintiff's case. In the case of **Bartlett v Sidney Marcus Ltd** (supra) the Plaintiff used the vehicle for four weeks and drove it for 300 miles.

The defect appeared after use. In the current suit under consideration the defects were detected immediately and the Defendant was notified and undertook to have the defects rectified. The underlying reasoning is that there was an implied warranty that the vehicle would be fit for the purpose for which such vehicles are used.

According to the decision of Salmon LJ in **Bartlett versus Sydney Marcus Limited** (supra) the question whether or not goods are of merchantable quality is essentially a question of fact. Salmon LJ reviewed the evidence and this is what he said about it:

> "If one adopts the test laid down by Lord Wright … that the goods were of unmerchantable quality if, in the form in which they were tendered, they were of no use for any purpose for which such goods are normally used and hence were not saleable under that description, then it seems to me that it is impossible to say that there is evidence that this motor car was of no use for the purpose for which such a motor car would normally be used. I am particularly impressed by the fact that, for one month after it was bought, it was driven by the Plaintiff, apparently perfectly conveniently, and it only went into the garage then because that was the time when the garage could take it."

In this case the question of fact is answered by the inspector of the vehicle who established that the vehicle was not fit for the purpose unless it goes through an engine overhaul. It is therefore my finding that the vehicle was not fit for the purpose for which the Plaintiff wanted it. However that is not the end of the inquiry. The Defendant agreed to rectify certain defects which it did. However the inspector after doing a road test established that the problem still was unresolved and was in the engine and it required an engine overhaul. Consequently the conclusion is that the vehicle was not fit for the purpose for which such vehicles are normally sold which is for transportation. The Plaintiff and her husband established immediately after driving the vehicle that it had a problem. The Defendant's representatives also established that the vehicle had a problem and their diagnosis was that it had been packed for a long time and required a general

service. The Plaintiff complied with advice of the Defendant to take the vehicle for general service. Even after the general service the vehicle still had problems in that it had low thrust power. An independent loss adjuster/mechanic was employed by the parties and he recommended upon first evaluation certain interventions which were made by the Defendant. He expressly indicated that he had to do a road test on the vehicle after the interventions had been complied with. When he did test the vehicle, it still had the problem and he concluded that it is required completed engine overhaul.

The implied condition as to fitness for the purpose coupled with the agreement of the parties exhibit P5 puts the obligation on the Defendant to rectify the defects. On that basis the Defendant according to the testimony of PW1 and PW2 refused to carry out the engine overhaul. It is the submission of the Defendant's Counsel without evidence that the problem was rectified. No admissible evidence was adduced and the submission cannot be sustained. In those circumstances the Defendant is in breach of its duty to rectify the defects in the vehicle so as to make it fit for the purpose for which the Plaintiff required it. Issue number 1 is therefore resolved in the Plaintiffs favour.

Remedies

The Plaint was filed immediately after the consultancy report on 20 March 2013. The final consultancy report is dated 16th of February 2013. Subsequent to filing the action the Defendant denied liability. The Defendant wrote a letter without prejudice on 18 December 2012 and that taking in the spirit of amicable settlement to repair any defects if any in the vehicle. They were not agreeable to a replacement of the vehicle. In paragraph 3 of the plaint the Plaintiff seeks recovery of **Uganda shillings 50,000,000/=** as special damages, or in the alternative an order for specific performance compelling the Defendants to deliver to the Plaintiff a well functioning vehicle of the make and model agreed upon.

The Plaintiff also prays for special damages being alternative car hire amounting in total to **Uganda shillings 47,300,000/=**. Coupled with the claim for special

damages of **50,000,000/=** the total claim of the Plaintiff is **Uganda shillings 97,300,000/=** as special damages.

In his written submissions, Counsel for the Plaintiff abandoned the alternative claim for specific performance. Upon the consideration of exhibit P5 it was clearly the intention of the parties that the Plaintiff would get a vehicle that would be fit for the purpose. Apparently efforts to settle the matter did not succeed. It is now more than one year since the ill-fated transaction took place. Specifically it is about one year and seven months. The vehicle was inspected on 28 January 2013. The vehicle is a 2000 model Land Cruiser Prado. The Plaintiff had not paid the balance of **Uganda shillings 18,000,000/=**. The Plaintiff has since that time being using alternative transport. Having committed **Uganda shillings 50,000,000/=**, the Plaintiff would have been using her vehicle and it was a reasonable as a member of Parliament required to visit her constituency for her to use alternative transport. I have carefully considered the batch of receipts admitted in evidence as exhibits P7 and PE 8. The Plaintiff was able to prove **Uganda shillings 33,150,000/=** in the receipts issued by Africa One Tours and Travel Limited. However no receipt was issued for the tax invoice number 178 dated 1st of March 2013 for **Uganda shillings 13,950,000/=**.

In the circumstances the Plaintiff incurred costs totalling to **Uganda shillings 83,150,000/=** which has been proved in this court in terms of a deposit of **Uganda shillings 50,000,000/=** together with hiring cost of **Uganda shillings 33,150,000/=**.

I am inclined to grant the Plaintiffs alternative prayer for a vehicle because it is also the prayer of the Defendant in the counterclaim. In the counterclaim the Defendant seeks for payment of the balance of **Uganda shillings 18,000,000/=** and for the Plaintiff to collect her car. However an order issues against the Defendant to make available to the Plaintiff a sum of **Uganda shillings 83,150,000/=** in special damages. Pursuant to the finding that the Plaintiff is entitled to the above sum, the Defendant shall avail to the Plaintiff an alternative vehicle of her choice and any balance leftover would be paid to her. On the same grounds the counterclaimants claim for damages in the counterclaim against the Plaintiff is dismissed with costs.

As far as the claim for general damages is concerned according to **Halsbury's laws of England fourth edition reissue volume 12** (1) paragraph 812 general damages are defined as those losses, usually but not exclusively non-pecuniary, which are not capable of precise quantification in monetary terms. They are those damages which will be presumed to be the natural or probable consequence of the wrong complained of; with the result that the Plaintiff is required only to assert that such damage has been suffered. In the East African Court of Appeal case of **Dharamshi vs. Karsan [1974] 1 EA 41** it was held that under the common law doctrine of *restitutio in integrum*, the Plaintiff has to be restored as nearly as possible to a position he or she would have been in had the injury complained of not occurred**.**

The Plaintiff suffered inconvenience of having no alternative transport after the parties reached a stalemate whereupon the Plaintiff sued the Defendant and no settlement was reached within a period of one year and seven months. During this period the Plaintiff had paid the Defendant **Uganda shillings 50,000,000/=** but did not have a vehicle. The Plaintiff hired alternative transport from 17 December 2012 up to 31 March 2013. The Plaintiff therefore suffered inconveniences and is awarded general damages for inconvenience in the sum of **Uganda shillings 15,000,000/=.**

Interest is awarded on any outstanding sums arising from the judgment at the rate of 21% from the date of judgment till payment in full.

Costs of the suit are awarded to the plaintiff.

Judgment delivered in open court the 22nd of August 2014

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Isingoma Esau holding brief for Chris Bakiza for the plaintiff

Plaintiff not in court

Dennis Sembuya holding brief for Paul Rutisya for the Defendant

Defendant not in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

22/08/2014