

THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO 621 OF 2014

KULAGIRA GEOFFREY}.....PLAINTIFF

VS

LYNKS MINERAL RESOURCES LTD}.....DEFENDANT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Plaintiff's is a male adult Ugandan and filed this suit against the Defendant, a limited liability Company for a declaration that the he is the lawful owner of the suit motor vehicle, a permanent injunction restraining the Defendant, its agents and anybody from interfering with the Plaintiff use and utilisation of the vehicle, general damages and costs of the suit. The vehicle is a BMW X6 registration number UAL 500R. The suit was filed on fourth of September 2014 and summons issued on 18 September 2014.

The Defendant filed no written statement of defence and an interlocutory judgment was entered by the Registrar on 7 November 2014. The record shows that an order for substituted service on the Defendant was issued in Miscellaneous Application No 841 of 2014. In the affidavit of service of one Mugambe Godfrey, a court process server, he deposes that upon failure to serve the Defendant/respondent in the ordinary way owing to the fact that the its last known address was plot 22 Nnyonyi Gardens which was closed, the Plaintiff applied for summons and hearing notice to be served on the Defendant by way of substituted service in the daily newspapers and the application was granted. On 3 October 2014 summons and hearing notices were published in the monitor newspaper and a copy of the same was attached to the affidavit of service. Secondly the court process server came to learn from the Plaintiff's advocate that when an application for a temporary injunction came for hearing on 8 October 2014 Mr Karuhanga informed the court that he had received instructions from the Defendant and requested for time to file a defence and

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reply to the application for temporary injunction. Subsequently Counsel Karuhanga acknowledged receipt of the plaint as well as the application in Miscellaneous Application No. 774 of 2014 for a temporary injunction against the Defendant.

No written statement of defence was filed and on 20 January 2015 when the suit came for formal proof I made an order for the Registrar to summon Counsel Karuhanga to appear in court personally when he did not appear for formal proof proceedings and to explain why there was no defence. The record of proceedings of the day of my orders is as follows:

“... the record shows that one Ellison Karuhanga appeared for the Respondent in HCMA No 774 of 2014. His client was apparently served by substituted service ordered by the registrar in MA No 841 of 2014. The interim order issued by the Registrar was extended to 26th of November 2014. The Respondent party sought for time to file a reply to the application MA 774 of 2014 and the application heard on 26th of November 2014. The application seems not to have come up for hearing. The record shows that the applicant/Plaintiff’s Counsel applied for judgment in default of defence and the order was granted by the registrar on the 7th of November 2014 before the application came for hearing. It is not clear why the Respondents lawyer did nothing up to this stage.

The respondent’s lawyer intimated to court that he has instructions to contest everything. I would like the registrar to summon him before any further proceedings in this matter to explain the issue of him not having complied with the court schedules and the absence of the Defendant in these proceedings. The Counsel is to be summoned to appear personally in court on the 17th of Feb 2014 at 9.30 am for to respond to the concerns of the court. This matter is accordingly adjourned for mention on that date.”

On 17 February 2015 when the matter came for mention, Counsel Ellison Karuhanga informed the court that he forwarded the pleadings of the Plaintiff to one of the directors of the Defendant Company for their comments and proper instructions. He did not hear from Defendant again and could not properly participate in the proceedings. One of the directors had a medical condition (Post Traumatic Stress Disorder) and was been treated in Dubai. The ruling of the court was that Counsel Ellison Karuhanga did not have proper instructions and the matter would proceed to the next stage. If the Defendant was serious it ought to have filed the necessary applications i.e. for

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extension of time to file a written statement of defence. The suit was therefore fixed for formal proof on the 13th of May 2015.

The Plaintiff is represented by Bbaale and Partners Advocates and Legal Consultants.

The Plaintiff called two witnesses and the matter proceeded on the 13th of May 2015. The Plaintiff testified as PW1.

The gist of the Plaintiffs case is that 7 June 2014, the Plaintiff purchased motor vehicle BMW X6 engine number X20080923014071 and chassis number 5UXFG83508LZ 91673 registration number UAL 500 R from the Defendant for a consideration of Uganda shillings 180,000,000/= which the Plaintiff paid the Defendant in cash and in the presence of Lumu Benon a witness to the transaction and PW2. The agreement of sale is exhibit P1 dated 7th of June 2014. The agreement was signed on behalf of the Defendant by one Shreekant Son who appended the seal of the Defendant Company. Additionally the Plaintiff adduced exhibit P2 which is the resolution of the company filed with the registrar of companies dated 7 June 2014 and registered subsequently on 25 July 2014. The board resolution approves the sale of the said motor vehicle. Exhibit P3 is the registration book showing that the vehicle was firstly registered in Uganda in the names of the Defendant Messrs Lynks Mineral Resources (U) Ltd.

The Defendant was paid in cash. Thereafter the Plaintiff did not take delivery of the vehicle and initially left it to the Defendant's agents. He was at that time using another car he had also purchased from the Defendants being a Range Rover Sports UAR 365R. However when he requested for delivery of his vehicle from the Defendant and he went to the offices of the Defendant, he was surprised to find that it was closed whereupon he reported the matter to the police. The police discovered that the vehicle had been hidden in Luweero District and helped the Plaintiff to recover the vehicle. The Plaintiff is afraid that if he starts using the vehicle, the Defendant would impound it hence this suit for declaration.

The Plaintiff's testimony is supported by that of PW2 Mr Lumu Benon who testified that on 7 June 2014 he was called by the Plaintiff to accompany him to the offices of the Defendant at Nnyonyi Gardens, Kololo, and Kampala to witness the purchase of a motor vehicle. He

witnessed the agreement between the Plaintiff and the Defendant exhibit P1. He identified his signature and confirmed that the Plaintiff paid all the consideration for the motor vehicle in cash.

The Plaintiff's Counsel filed written submissions in which he wrote that the proper issue for determination is whether the Plaintiff is the lawful owner of the suit vehicle? Secondly whether the Plaintiff is entitled to the remedies sought in this suit.

With reference to the above facts Counsel submitted that the Plaintiff had been inconvenienced by the Defendant which continues to threaten that it would impound the motor vehicle and the Plaintiff was forced to have the vehicle parked for fear of having it removed from him. Secondly the Defendant elected to put itself out of the judicial process after it failed, neglected or refused to respond to the Plaintiff's suit against it. He submitted that a party who elects not to contest a suit leaves the evidence of the Plaintiff to be accepted as truthful. He submitted that the Plaintiff's evidence should be accepted as it is. Consequently the issue as to whether the Plaintiff is the owner of the suit motor vehicle should be answered in the affirmative.

As far as remedies are concerned Counsel prayed for an award of general damages to compensate the Plaintiff for the torture, anguish and injury he suffered due to the deliberate actions of the Defendant. He relied on the case of **Stroms versus Hutchinson [1905] AC 515** for the principle that general damages are such as the law will presume to be the natural or probable consequence of the act complained of. Secondly in the case of **Dennis Lwamafa versus Attorney General HCCS 79 of 1983**, it was held that the Plaintiff who suffers damages due to the wrongful act of the Defendant must be put in a position he would have been had he not suffered the wrong. Counsel further relied on article 126 (2) (c) of the Constitution of the Republic of Uganda for the principle that adequate compensation shall be awarded to victims of wrongs. In the premises he prayed for an award of Uganda shillings 20,000,000/= as fair and just bearing in mind the suffering and financial loss to the Plaintiff is gone through not using the vehicle. He also prayed for costs.

I have carefully considered the Plaintiff's suit as well as the fact that it is uncontested. I am persuaded that the testimonies of PW1 and PW2 are true. The documentary evidence in exhibit P1, exhibit P2 and exhibit P3 prove that the Plaintiff purchased the suit vehicle from the Defendant on 7 June 2014 and an agreement giving the terms of the deal was executed in exhibit

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P1. Subsequently the Plaintiff did not take delivery of the vehicle and the Defendant's premises were closed whereupon the Plaintiff reported the matter to the police and the vehicle was traced to Luweero district. Since June 2013 the Plaintiff has not enjoyed the vehicle he has purchased due to threats from the Defendant to have it impounded.

Despite the fact that the Plaintiff's served the Defendant through substituted service and through Counsel, the Defendant never put in a defence and the matter proceeded in default of filing a defence. In the case of **Sengendo v Attorney-General [1972] 1 EA 140**, the Attorney General did not file a defence and the Plaintiff's Counsel consented to the Attorney General cross examining the Plaintiff's witnesses but the High Court judge Phadke J declined to grant leave for cross examination. He held that to allow the Attorney General to cross examine the Plaintiff's witnesses would whittle down the East African Court of Appeal decision in **Kanji Devji v. Damodar Jinabhai & Co. (1934) 1 E.A.C.A. 87**: he noted that in that case it was held that:

“A Defendant who fails to file a defence puts himself out of court and no longer has any locus standi and cannot be heard.”

I agree that the law as stated in the authority of **Kanji Devji v. Damodar Jinabhai & Co. (1934) 1 E.A.C.A. 87**, has not been overturned. The court made every effort to have the Defendant heard but it was not possible. The Defendant was aware of the proceedings in the High Court but never made any application to participate in the proceedings and opted to send Counsel Ellison Karuhanga who was eventually discharged for want of instructions on what to do.

In the premises I agree with the submissions of the Plaintiff's Counsel which is clearly supported by the evidence.

The Plaintiff sought declaratory orders and in the circumstances the Plaintiff is entitled to a declaration under the provisions of Order 2 rule 9 of the Civil Procedure Rules which provides as follows:

"9. Declaratory judgment.

No suit shall be open to objection on the ground that a merely declaratory judgment or order is sought by the suit, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not."

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A rule in *pari materia* with the Ugandan Order 2 rule 9 of the Civil Procedure Rules was interpreted in the case of **Guaranty Trust Company of New York versus Hannay and Company Limited [1915] 2 KB 536** it was held by Pickford LJ that a declaration of right could be made even where no consequential relief can be given. According to Bankes LJ at page 568 the rule “enables the court to make the declaration irrespective of whether consequential relief could be claimed or not...”

Furthermore in **Halsbury’s laws of England 3rd edition volume 22 paragraph 1610 pages 746 – 747**, it is written that the rule gives a right to declaration without reference to the enforcement of those rights.

“Such merely declaratory judgments may now be given and the court is authorised to make binding declarations of right whether any consequential relief is or could be claimed or not ...”

The Plaintiff is in possession of the suit vehicle. He is entitled to the declaration in support of his right of possession and ownership. In the premises a declaration issues as prayed for in the following words:

The Plaintiff Mr. Kulagira Geoffrey is the lawful owner of motor vehicle BMW X6 engine number X20080923014071 and chassis number 5UXFG83508LZ 91673 registration numbers UAL 500 R that the Plaintiff purchased from the Defendant on 7 June 2014.

As far as the claim for general damages is concerned, the Plaintiff was inconvenienced and had to report a case to the police for the tracing of the vehicle after purchasing it. There is no clear evidence of the period it took for the Plaintiff to recover its vehicle. No particulars of how the Plaintiff recovered his vehicle were disclosed in evidence. Taking into account the duration of time between the purchase of the vehicle and its recovery from the Defendant’s agents, after the Plaintiff exerted efforts through reporting to police and having the vehicle traced, the Plaintiff is awarded Uganda shillings 8,000,000/= as general damages.

As far as the claim for a permanent injunction is concerned, a permanent injunction issues restraining the Defendant or agents from interfering with the Plaintiff’s lawful ownership and use

of motor vehicle BMW X6 engine number X20080923014071 and chassis number 5UXFG83508LZ 91673 registration numbers UAL 500 R.

I agree with the authorities submitted by the Plaintiff's Counsel that costs follow the event and since the Plaintiff incurred costs of filing and prosecuting the suit, the Plaintiff is awarded costs of the suit against the Defendant.

Judgment delivered on 3 August 2015.

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Bbaale Sadat Counsel for the Plaintiff

Plaintiff is absent

Matter had proceeded in default of Defence.

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

3rd August 2015

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