

First Deposited 35,000,000/=

2nd Deposited 16,000,000/=

3rd Deposited 14,000,000/=

4th Deposited 16,650,000/=

5th Deposited 24,000,000/=

6th Deposited 5,000,000/=.

7th Deposited 5,000,000/= . The last two in Crane bank.

He stated that at all the times he paid the money, the Plaintiff did not issue him with receipts.

Further that the Plaintiff refused to issue receipts to avoid tax. That when the Defendant realized this, he decided to bank the last two instalments.

By way of counter claim the Defendant seeks 50 million UGX for the reason that the Plaintiff refused to release the logbook and so he could not use the vehicle in the region of East Africa, countries in which he carried out Pastoral work which led him to hire other motor vehicles.

That the refusal to hand over the logbook and transfer forms of the motor vehicle amounted to breach of the agreement of sale. He therefore prayed for an order directing the Plaintiff to transfer the motor vehicle and General damages of 50,000,000/= as a result of the inconvenience he was subjected to.

I would like at this stage to say that when this case was called for scheduling, the Defendant's counsel Mr. Tumuhimbise submitted that the Defendant had no documents to rely upon. He however submitted that the Defendant would call four witnesses.

Hearing of the suit was fixed for 9th January 2017.

However on the 6th January 2017 Counsel for the Defendant wrote a notice of withdrawal from the suit and notified court as well as counsel for the Plaintiff.

The Plaintiff's advocates made several attempts to serve the Defendant and failing to find him even in his workplace sought substituted service. The Defendant still did not appear and the hearing proceeded exparte.

The issues agreed upon for resolution were whether the Defendant paid the full price of the motor vehicle to the Plaintiff and whether the parties are entitled to any relief.

On the first issue, both the Plaintiff's and Defendant's pleadings show that they were agreed that the two entered into a motor vehicle sale agreement.

It is also not in doubt that the price agreed was UGX 115,000,000/=. It is also as shown in Exhibit P1 that on signing the memorandum of sale of motor vehicle the Plaintiff acknowledged receipt of 15,000,000/= leaving a balance of 100,000,000/= which would be paid in fourteen installments the 1st one being 20 million and the remaining thirteen in shs. 6,200,000/= on the 29th day of subsequent months November 2012 to November 2013.

The Plaintiff called two witnesses, who testified to the claim. DW.1 Saffael Perwaiz, managing director told court that out of the remaining 100,000,000/= the Defendant paid a further 65,000,000/= leaving a balance of 35,000,000/=unpaid. These sums he supported with copies of receipts Exhibit P3 upto P11 and statement Exhipit P12.

DW.2 Kaitesi Peace being the Administrative Assistant of the Plaintiff gave a payment to payment account showing how much was paid by the Defendant also arriving at the same figures as DW2.

The evidence of the two Plaintiff's witnesses was not disturbed by cross examination or evidence in rebuttal since the Defendant did not appear to defend himself.

Having listened to the Plaintiff's evidence and the perusal of the exhibits, it is this court's finding that the two parties agreed to a price of 115,000,000/= and the Defendant made payments of 80,000,000/= leaving a balance of 35 million unpaid.

The Defendant is therefore in breach of agreement and liable to pay the Plaintiff 35 million as special damages.

As for the surcharge, clause 3(c) of the Memorandum of Sale provided as follows:

“All late payments attract a surcharge of 15% per month.”

The Defendant last paid in December 2013. The suit was filed on 06.08.2014 which was seven months since the breach occurred. Since the Defendant still had a debt of 35 million, it is this figure which would be subjected to 15% x 7 months. Thus

$$35,000,000 \times \frac{15}{100} \times 7 = 36,750,000/=$$

In the premises I find the Plaintiff entitled to 36,750,000/= as surcharge.

Plaintiff also prayed for interest of 24% pa on the special damages.

The Plaintiff is a business entity striving for profit. The Defendant deprived it of its money and so the Plaintiff could not reinvest it.

It is just fair that the Plaintiff is put in as near a position she would have been if the Defendant had not breached the agreement. This being a commercial transaction I find interest of 24% pa on the special damages from 1st December 2013 till payment in full appropriate.

The Plaintiff is also awarded the costs of the suit.

As for the counter claim, the Defendant/counter claimant did not adduce any evidence as to entitle him to the 50 million or part thereof. It is dismissed with costs.

In conclusion, judgment is entered in favour of the Plaintiff against the Defendant as follows:

- a) The Defendant pays the Plaintiff Shs. 35,000,000/= by way of special damages.
- b) Interest on (a) above at 24% pa from 1st December 2014 till payment in full.
- c) The Defendant pays the Plaintiff surcharge of shs.36,750,000/=.
- d) Costs of the suit.

Dated at Kampala this 31st day of May 2018

HON. JUSTICE DAVID K. WANGUTUSI
JUDGE