THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL COURT]

CIVIL SUIT No. 394 OF 2014

1. **KATETE AUSI**
2. **KAKOMO SULAIMAN** **::::::::::::::::::::::::::::::::::::**

PLAINTIFFS

T/A AKKAS GENERAL SUPPLY

VERSUS

1. **L.B. NARASHINO AUTO PARTS LTD**
2. **MUSA MUGERWA** **::::::::::::::::::::::::::::::::::::**

DEFENDANTS

BEFORE: HON. MR. JUSTICE B. KAINAMURA

JUDGEMENT

The plaintiffs filed this suit against the defendants seeking refund of UGX 123,000,000/= (Uganda Shillings One Hundred Twenty Three Million only), special damages, general damages and costs of the suit.

The plaintiffs allege that on 2nd August 2011 they entered into an agreement with the 2nd defendant company for the purchase of the motor vehicle Chasis No. CXZ 197J-3006158 an Isuzu 10 Tones truck for a consideration of UGX 120, 000,000/=. That after they made a total payment of UGX 29,500,000/= they were informed by an agent of the defendants that the vehicle they were making payments for had been sold to a third party. They were requested by the Directors of the 2nd defendant to make another selection from the vehicles in the bond. They selected a Isuzu Dumper 1987 Model Charis No. CX 219J-2030937 engine Number 10 pc 1-9560027 Registration No. UAQ 122Z for a consideration of UGX 131,500,000/= which would be reduced by an amount of UGX 15,000,000/= representing the amount previously deposited on the first vehicle. The plaintiffs took delivery of the vehicle and thereafter made deposits towards the cost of the vehicle on diverse days and by 6th March 2013 the total

deposits amounted to UGX 123,000,000/=. That despite making the said deposits the defendants went ahead and impounded the vehicle which they sold to a third party without the consent of the plaintiffs.

On his part the 1st defendant denied ever dealing with the plaintiff or authorising sale of the said vehicle to the plaintiffs. The 2nd defendant in its defence contends that it sold the vehicle to the plaintiffs at the agreed UGX 131,500,000/= minus the sum of UGX 29,500,000/= paid on the first vehicle leaving balance of UGX 102,200,000/= which the plaintiffs were to pay in 10 months failure of which would attract a surcharge of 15% per month and that the 1st defendant reserved the right to impound the vehicle in event of failure to pay the monies when due. Further that the plaintiffs remained with an outstanding balance of UGX 46,500,000/= which led them to impound the vehicle which was then sold to a third party.

The 1st plaintiff testified that on the 2nd day of August 2011they entered into an agreement with the 1st defendant company for the purchase of motor vehicle Chasis No. CXZ197j-3006158 an Isuzu 10 tonnes truck for the price of UGX 120,000,000/=.

Further that they made down payments on 2nd August 2011 of UGX 5,000,000/= (see **PEX 1)** and made another payment of UGX 5,000,000/= on the 8th august 2011 (see **PEX 2**) on the 30th of September 2011 another payment of UGX 5000, 000/= **(PEX 3)** was also made for the motor vehicle.

Further still that after the payment on the 30th of September 2011, the plaintiffs were informed by the 2nd defendant an agent of the 1st defendant that the motor vehicle the plaintiffs had been making payments towards was sold to a third party.

That the 2nd defendant suggested the selection of another vehicle from the bond which the plaintiffs dully subscribed to and as a result selected motor vehicle Isuzu Dumper 1987 Model Green Colour Chasis No. CXZ19j-2030937, Engine No. 10PC1-9560027 Reg No. UAQ 1227 for a consideration of UGX 131,500,000/=. The consideration previously paid was to be reduced by the amount that the plaintiffs had previously deposited on the motor vehicle that the 1st defendant had previously sold to a third party.

The 1st plaintiff stated that further payments were made of UGX 5,000,000/= on the 7th January 2012 **(PEX 4**), of UGX 3,500,000/= and UGX 29,500,000/= on 9thand 12th January 2012 **(PEX 5 and 6)** , and as a result the 2nd defendant went ahead to execute a formal sale agreement with the plaintiff see **(PEX 21)** that further payments were made on monthly basis to the defendant as was evidenced by **(PEX 7,8,9,10,11,12,13,14,15,16,16,18).**

The 1st plaintiff further stated that despite the said payments, on the 11th day of February 2013, the defendants through their agents impounded the motor vehicle from the plaintiffs without offering the plaintiffs any reasonable justification. Upon this inconvenience, the plaintiffs approached the defendant's agents only to be required to pay some more money for the vehicle to be returned.

That the plaintiff made further payments of UGX 5,300,000/= on 4th March 2013 and UGX 1,700,000/= on the 6th of March 2013 **(PEX 19 and 20)** respectively.

The 1st plaintiff's further testified that despite paying the total sum amounting to **UGX 123,500,000/=** and making numerous requests for the return of the motor vehicle, the 1st defendant has todate paid no heed to the plaintiffs demands.

It's also the 1st plaintiff's testimony that the 1st defendant has already sold the vehicle to a third party without the plaintiffs consent and as a result of the defendants impounding of the truck, they have suffered special damages amounting to UGX 13,800,000/=.

The 1st defendant did not call any witness however in its amended WSD denies every claim and avers that the grounds on which the suit relies are frivolous, prolix, vexatious, and that they should be dismissed with costs.

It's the 1stdefendant's defence that it has never entered into an agreement with the plaintiffs either in their individual capacity or otherwise to purchase motor vehicle Isuzu Chassis No. CX21975-300615 and agreed the price of UGX 120,000,000/=.

The 1st defendant avers that in purchasing motor vehicle Isuzu Chassis No. CZ197j-3006158, the plaintiffs dealt with the 2nd defendant without its knowledge and that at all material times the plaintiffs made the payments to the 2nd defendant who would issue the receipts in the names of the 1st defendant, and as a result, the 1st defendant never received any money as consideration from the sale of motor vehicle CZ97j-30006158or motor vehicle UAQ 122Z Isuzu 10 tonnes Chassis No. CXZ197j-2030937 and that any payment made were paid to the 2nd defendant, who was a sales person of the 1stdefendant.

The 1st defendant also avers in its WSD that the 2nddefendant was involved in many illicit, fraudulent acts where he would obtain money by false pretences from several individuals and third parties and has been charged before for crimes of that nature and that at all material times the plaintiffs knew the kind of fraudulent individual the 2nd defendant is and as such it is not responsible or liable for the acts of the 2nd defendant. Further that the plaintiffs claim

for special damages are unfounded and baseless and the plaintiffs' claims against it in the suit are misconceived.

The 2nd defendant, neglected and/or refused to file a defence despite being served with the pleadings on courts file. A default judgment was entered against the 2nd defendant on 2nd June 2016.

During scheduling the following issues were framed for determination.

Issue One: *Whether there was a contract of sale of the m/v between the plaintiffs and the 1st defendant?*

Issue Two: *Whether the defendants breached the contract?*

Issue Three: *Whether the defendants are liable for the breach?*

Issue Four: *Whether the plaintiffs are entitled to the remedies sought?*

At the close of the defence, both Counsel were requested to address court in written submissions. It is only Counsel for the plaintiff who did.

Issue One: **Whether there was a contract of sale of the m/v between the plaintiffs and the 1st defendant?**

Counsel for the plaintiffs in his submissions referred to **Section 10 of the Contracts Act, 2010**, which defines a contract as an agreement made with the free consent of the parties with the capacity to contract, for a lawful consideration and with a lawful object, with the intent to be legally bound. Counsel relied on the testimony of PW1 where he informed court that the 2nd defendant acting on behalf of the 1st defendant offered to sell Motor Vehicle Chassis number CXZ197j-30006158 Isuzu 10 tonne truck to the plaintiffs at the price of UGX 120,000,000/= further that upon agreement the plaintiffs on the 12th august 2011 made a down payment of UGX 5,000,000/= as evidenced by '**exhibit PE1'.** However the defendants unlawfully sold off the vehicle and this led to the formation of a new contract between the parties involving the selection, price and payment schedule for a new truck registration number UAQ 122Z, priced at UGX 131,500,000/= and thus the agreement was formalised and exhibited as '**PE 21'**.

Counsel asserted that the sale of the motor vehicle Registration Number **UAQ 122Z** to the plaintiffs as stated was not denied and that at all material times the plaintiff's point of contact to the 1st defendant was the 2nd defendant who was at all times an employee and

sales agent of the 1st defendant. Counsel further submitted that it was the 2nd defendant who negotiated all the contractual terms for the purchase of both Motor Vehicles, Chassis Number CXZ197-30006158 Isuzu 10 tonnes truck and UAQ 122Z on the 1STdefendant's behalf and that all monies were received in the office of the 1st defendant. Further on this issue Counsel contended that the defence did not avail any witnesses to controvert the plaintiff's testimony.

Lastly Counsel submitted that the plaintiff is protected by the indoor management rule as expounded in the case of ***Royal Bank of Scotland Vs Turquand ALLER 1856*** wherein it was held that;

> *"an innocent party doing business with a company and are not in a position to know if some internal rule had not been complied with should be protected".*

The 1st defendant pleaded in its amended written statement of defence that the 1st defendant never entered into an agreement with the plaintiffs to purchase M/V Isuzu Chassis No. CX21975-3000615 and agreed to the price of UGX 120,000,000/=. Further that in purchasing the said Motor Vehicle the plaintiffs dealt with the 2nd defendant without its knowledge. And that at all material times the plaintiff made the payments to the 2nd defendant who issued receipts in the names of the 1st defendant and that the 1st defendant never received any money as consideration for the sale of the vehicle. The 1stdefendant contends that it never had any legally binding relationship with the plaintiff.

I have reviewed the submission of Counsel for the plaintiff on this issue and looked at the plaintiff exhibits '**PE1, PE2, PE3, PE4,PE5, PE6, PE7, PE8, PE9 PE10, PE11, PE12, PE13, PE14, PE14, PE15, PE17, PE18, PE19 and PE20'** being receipt payments and '**PE21**' the contract for sale.

For a valid contract to exist as provided under **Section 10 of the Contracts Act, 2010** it has to be an agreement made with free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object, with an intention to be legally bound.

The 1st defendant contends that they were not a party to the agreement as it was executed between the plaintiffs and the 2nd defendant despite the allegation that the 2nd defendant was acting on behalf of the 1st defendant. The 1st defendant in their WSD do not deny the fact that the 2nd defendant was their employee. However they point a bad picture about his character and yet he remained in their employ. He was allowed to remain that sales persons despite the negative pictures they had of him.

Due regard should be given to the fact that a person cannot be bound by a contract made on his behalf without his/her authority. However, if he, by his words and conduct allows a third party to believe that that particular individual is his agent even when he is not, and the third party relies on it to the detriment of the third party, he (principal) will be estopped or precluded from denying the existence of that person's authority to act on his behalf. The 2nd defendant conducted himself as the salesperson in the employ of the 1st defendant, and concluded the agreements in favour of the 1st defendant with their consent and with full capacity to contract. Counsel for the plaintiffs conducted that as the plaintiffs they were not bounced to know the internal workings of the defendant company.

Therefore it's my finding that the contract of sale was entered into with the free consent of all the parties, the 1st defendant inclusive.

The other elements contained in Section 10 of the Contracts Act 2010 are not in contention and it is my further finding that all the parties had the intention to be legally bound by the contract.

Accordingly issue 1 is answered in the affirmative.

I intend to resolve issue 2 and 3 together

Issue 2 and 3

Issue Two: Whether the defendants breached the contract?

Issue Three: Whether the defendants are liable for the breach?

Counsel for the plaintiffs in his submission asserted that on the 12th day of June 2012, the plaintiffs executed a formal sale agreement with the 2nd defendant on behalf of the 1st defendant where upon 1st defendant handed over the Motor Vehicle REG. No. UAQ 122Z for a consideration of UGX 131,500,000/=. Counsel cited **Blacks Law Dictionary 8th edition on page 200** which defines a breach of contract as;

> *"a violation of a contractual obligation by failing to perfom one's own promise by repudiating it or by interfering with another party's own performance".*

Counsel relied on the testimony of **PW1** and **PW2** who testified that on the 11th day of February 2013, the 2nd defendant without cause or notice impounded M/V registration No. UAQ 1227Z where upon PW1 and PW2 approached the 2nd defendant to inquire as to the

reason why the car was impounded. They were informed that they had to make further payments, which payments were made pursuant to exhibits **PE19** and **PE20**.

Furthermore Counsel submitted that despite the memorandum of sale under Para (b) providing that payment was to be made within 10 months of the execution of the contract, the plaintiffs paid the consideration after the lapse of the time agreed and the same was accepted by the defendant who issued receipts to the plaintiffs. (see **exhibits PE16** and **PE 17** and **PE18)**. It was Counsel's submission that in the circumstances the defendant is estopped from claiming that the plaintiffs committed a breach when the defendants continued receiving the money from the plaintiffs after the lapse of the 10 months. According to Counsel the unequivocal actions of the defendants of continuously receiving the money from the plaintiffs after the 10 months with the promise to return the motor vehicle after further payments were made towards the purchase of the vehicle was interpreted by the plaintiffs as a promise made by the defendants that were binding on the parties.

Counsel in support relied on **Section 114** of the **Evidence act Cap 6** which provides;

> 114 Estoppel
>
> *When one person by his or her declaration, act or omission intentionally causes or permits another person to believe a thing to be true and to act upon their behalf, neither he or she nor his or nor her representative shall be allowed in any suit or proceedings between himself or herself and the person or his or her representative to deny the truth of that thing".*

Counsel also cited the case of ***Central London Property Trust Ltd Vs High Trees Ltd (1947 1 kb 130***) where it was held;-

> *"a promise intended to be acted on Is binding in so far as its terms properly apply*".

Counsel for the plaintiff argued that the defendant's failure to honour their promise to return the vehicle which they went on to sell to a third party to unjustly enrich themselves, connotes the defendants breach of contract and in essence their liability.

The 1st defendant in their WSD merely denied any of the acts that would connote the alleged breach alluded to by counsel for the plaintiffs and did not deem it necessary to adduce any evidence to rebut the plaintiff's assertions.

In issue one I have already held that indeed there existed a valid contract for sale (see **exhibit PE21***)* which contract had conditions, one of which conditions was for the plaintiffs to make payments for the truck within 10 months from the date of the contract. However, the vehicle was impounded by the agents of the defendants and as was testified to by PW1 and PW2 they went to the offices of the defendants and demanded reason why the vehicle was impounded only to be instructed to make more payments upon which the vehicle would be returned to them, which payments were made but still the vehicle was not returned to them.

Counsel for the plaintiff also asserted that the motor vehicle had been sold to a third party so as for the defendants to unjustly enrich themselves. However this assertion is not borne out from the evidence on court record.

What is clear is that a contract was entered into, payments were made and receipted even after the expiration of the 10 months within which payments were to be made which the defendants accepted which in my view indicated the defendants had waived strict observance of the said period. This waiver in my view, enjoined the defendants to return the vehicle to the plaintiffs until completion of the remaining sums, UGX 123,500,000/= having already been paid. However the plaintiffs went ahead and sold the motor vehicle to a third party which sale defeated the agreed position.

In conclusion therefore my finding is that there was a contract for sale which was honoured by the plaintiffs albeit not in its entirety but however to the point of conclusion, the vehicle was impounded to enforce payment which payment was made, despite the payment, the motor vehicle was still retained by the defendants who in essence are estopped from on going back on their word to return the vehicle after those payments. In my view the defendants sold the motor vehicle to a third party to the detriment of the plaintiffs, which is a breach of contract which breach was perpetrated by the 1st defendant in connivance with its agent the 2nd defendant.

Accordingly both issues 2 and 3 are answered in the affirmative.

Issue Four: Whether the plaintiffs are entitled to the remedies sought?

Counsel for the plaintiff in their submissions relied on **Section 61 of the Contracts act 2010** which states that;

"where there is a breach of contract, the party who suffers the breach is entitled to receive from the party who breaches the contract compensation for any loss or damage caused to him or her".

As determined by court, a contract existed for the sale of a motor vehicle, the defendants breached that said contract by impounding the said motor vehicle and subsequently selling it to a third party. As a result the plaintiffs aver that that they are entitled to the refund of the sum UGX 123,500,000/= as payment received by the defendants.

Based on my findings above the plaintiffs are entitled to full refund of UGX 123,500,000/= from the 1st defendant.

SPECIAL DAMAGES

In so far as special damages are concerned Counsel for the plaintiffs Citing ***Shell (u) Ltd Vs Achillis Mukiibi Civil Appeal No. 69 of 2004***, submitted that special damages must be specifically pleaded, which assertion I too subscribe to.

Counsel went on to submit that the special damages of UGX 13,800,000/= arose from costs incurred on a contract to transport materials for Kwokwo Construction Ltd, the costs for the vehicle repair due to the defendants unlawful acts of impounding the Motor vehicle and the consequences of the plaintiffs inability to honour the terms of the transportation contract with Kwokwo Construction Company that is the subsequent arrests and being charged with obtaining money by false pretence at Kireka Police Station. In evidence there is **exhibit PE23**. There is also a claim for legal services of UGX 3,000,000/= (see **PE23**).

As stated earlier special damages must be specifically pleaded, and proved. With regard to the contract with Kwokwo Construction Company for the transportation of construction material to the DRC, I deem such a contract to have been arrived at in contradiction of the set out terms of the sale agreement which dictated that the Motor Vehicle the subject matter of the suit should not be removed from the jurisdiction of Uganda until the completion of the stipulated price. At the time of the impounding of the vehicle, the plaintiffs had not yet completed the required payments to render them able to take the vehicle to another jurisdiction hence i am inclined to hold that the transportation contract being in breach of the contract of sale of the motor vehicle cannot be used as the basis of the claim as it was illegal.

GENERAL DAMAGES.

In respect to general damages Counsel for the plaintiff relied on the case of ***Emmanuel Kyoyeta Vs Emmanuel Mutebi Civil Suit No. 781 of 2014*** where it was held that general damages have to be proved on the balance of probabilities. Counsel further relied on the case of ***Bank of Uganda Vs Fred William Masaba and 5 others SCCA 3/98*** where the Supreme Court held that the damages available for breach of contract are measured in a similar way as loss due to personal injury. Counsel argued that one should look into the future so as to forecast what should have likely happened if he never entered the contract.

Based on above principles Counsel submitted that the plaintiffs are entitled to amount UGX 20,000,000/= due to the resultant apprehension and inconvenience caused to the plaintiffs and prayed that the 1st defendant duly pay the said amount. I agree and will grant the plaintiff general damages of UGX 20,000,000/=.

COSTS

In so far as costs are concerned, **Section 27** of the **Civil Procedure Act Cap** 71 manifests that the costs to the suit follow the event.

Clearly from the above judgment the defendants shall bear the costs to this suit as they are the unsuccessful party in this suit.

In the result judgment is entered for the plaintiffs against the defendants in the following terms.

a) A refund of UGX 123,000,000/= (Uganda Shillings One Hundred and Twenty Three Million).
b) General damages of UGX 20,000,000/= (Uganda Shillings Twenty Million).
c) Costs of the suit

I so order

B. Kainamura

Judge

02.08.2018