

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**[COMMERCIAL DIVISION]**

**CIVIL SUIT NO. 446 OF 2018**

**MUJUNI JIMREX:.....PLAINTIFF**

**VERSUS**

**1. HAKS INVESTMENT LTD**

**2. ISAACK KAKUMBA MUYANJA :.....DEFENDANT**

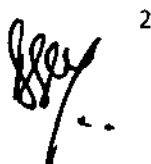
**BEFORE: HON. JUSTICE DUNCAN GASWAGA**

**JUDGMENT**

- [1] The plaintiff sued the defendants for special damages of USD 20,000 arising out of breach of a contract of sale of a motor vehicle by the 1<sup>st</sup> defendant and being money paid by the plaintiff to the 1<sup>st</sup> defendant to deliver a motor vehicle; general damages for inconvenience; punitive damages for the high handed manner of the 2<sup>nd</sup> defendant acting on behalf of the 1<sup>st</sup> defendant to cheat the plaintiff; interest at a commercial rate of 25% per annum from the time of breach till payment in full and interest on (b) and (c) at Court rate from the date of judgment till payment in full and for costs of the suit.



- [2] The background of this suit is that on the 14/12/2016 the plaintiff entered into a contract with the 1<sup>st</sup> defendant for the sale of Motor vehicle Toyota Revo Make 2016/2017 model Reg. No.TBA Engine No; TBA Chasis No.TBA 2.8 L Diseal 4WD/MT/RHD of metallic Silver colour for an agreed sum of USD 49,000 (United States Dollars Forty Nine Thousand Only). On the date of execution of the said contract/agreement a sum of USD 20,000 was duly paid by the plaintiff to the defendant as initial deposit and the balance of USD 29,000 was payable upon delivery which was to be within ninety days as per the agreement. The defendant however never delivered the vehicle in breach of his contractual obligations with the plaintiff. It was a term of the contract that the 1<sup>st</sup> defendant would refund the consideration paid by the plaintiff in case of failure of transfer of the motor vehicle at the instance of the defendant. The plaintiff demanded the money from the 1<sup>st</sup> defendant and the 2<sup>nd</sup> defendant issued cheques for payment of the sum but the same were dishonoured by Barclays bank for lack of sufficient funds. Various demands for the money later on were still not responded to by the 1<sup>st</sup> defendant not even the criminal cases instituted against him, the reason for this suit.
- [3] During the hearing of the case on 28/04/2021 the defendants did not turn up without excuse at all. This was not the first time. The plaintiff sought and obtained leave to proceed with the case exparte. Only one witness, the plaintiff was called to testify.
- [4] The following issues were framed for determination by this court;
- 1. Whether there was a contract between the parties**
  - 2. Whether there was breach of contract by either party**
  - 3. What are the remedies available for the parties**

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**Issue 1: whether there was a contract between the parties**

- [5] It was submitted for the plaintiff that a contract is an agreement enforceable by law made with free consent of the parties with capacity to contract, for a lawful consideration and with a lawful object and with the intention to be legally bound. See **Section 2 and 10 of the Contracts Act No.7 of 2010**. See also **Greenboat Entertainment Ltd Vs City Council of Kampala, Civil Suit No. 0580 of 2003**. That in the instant case, the plaintiff entered into a contract with the 1<sup>st</sup> defendant on 14/12/2016 for the sale of (the above described) motor vehicle an agreed sum of USD 49,000 whereof at execution he paid sum of USD 20,000 to the 1<sup>st</sup> defendant and the balance of USD 29,000 was to be paid upon delivery of the motor vehicle. See **Exh P1** in the plaintiff's trial bundle. Further that in the written statement of defence the 1<sup>st</sup> defendant clearly indicates that the 2<sup>nd</sup> defendant received the money on its behalf and there is no denial of receipt of money in the rest of the pleadings. The defendant also attempted to refund the said money to the plaintiff vide Barclays Bank cheques numbers; **000036, 000037, 000038, 000039** dated 01/09/2017 and of USD 20,000. That the agreement of sale was duly signed by the 2<sup>nd</sup> defendant for and on behalf of the 1<sup>st</sup> defendant and by the plaintiff acting for himself indicating an intention to be bound as is required under the law. See **William Kasozi Vs DFCU Bank Ltd, Civil Suit No. 1326 of 2000**. Further that since the contract was duly executed and there was no claim of forgery by the 2<sup>nd</sup> defendant, any contract made with the 2<sup>nd</sup> defendant is binding on the 1<sup>st</sup> defendant thereby

making the 1<sup>st</sup> defendant company equally liable in breach of the contract executed on the 14<sup>th</sup> day of December 2016 and that as such the evidence on record clearly shows that there was a contract between the plaintiff and the defendant. See Lennard's Carrying Co. Vs Asiatic Petroleum Co. Ltd (1950) A.C 705 and Harriet Arinaitwe Vs Africana Clays Ltd, Civil Suit No. 376 of 2013.

[6] Section 10 of the Contract Act No.7 of 2010 is to the effect that;

*"A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object with the intention to be legally bound".*

In the case of Green boat Entertainment Ltd Vs City Council of Kampala Civil Suit No. 0580 of 2003 a contract was defined in the following terms;

*"In law, when we talk of a contract, we mean an agreement enforceable at law. For a contract to be valid and legally enforceable, there must be: capacity to contract; intention to contract; consensus ad idem; valuable consideration; legality of purpose; and sufficient certainty of terms. If in a given transaction any of them is missing, it could as well be called something other than a contract."*

[7] In the instant case, the plaintiff and 1<sup>st</sup> defendant concluded an agreement dated 14/12/2016 and the same bound the parties. There has been no evidence presented in this court to prove that there was any coercion on any of the parties. The said parties willingly signed the said agreement and unless otherwise construed, they intended to

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be legally bound by it. Further, a person has capacity to contract where that person is eighteen years or above; is of sound mind and is not disqualified from contracting by any law to which he or she is subject. The parties in this case are within the confines of the law. Suffice to note also that the first defendant being a company is a legal person with capacity to contract. In this instance the agreement was signed on the 1<sup>st</sup> defendant's behalf by its director, the 2<sup>nd</sup> defendant, and as such the 1<sup>st</sup> defendant is bound by the contract. Therefore, these facts prove the existence of a contract between the plaintiff on one side the defendants on the other. This issue is answered in the affirmative.

**Issue 2: whether there was breach of contract by either party**

- [8] It was submitted for the plaintiff that under Section 33 and 36 of the Contracts Act No. 7 of 2010 parties to a contract are mandated to perform or fulfill their obligations unless the performance is dispensed with or excused under the law. See **William Kasozi Vs DFCU Bank Ltd Civil Suit No. 1326 of 2000**. That a breach arises when there is a failure without legal excuse to perform any promise which forms the whole or part of the contract. See **The Black's Law Dictionary 4<sup>th</sup> Edition 1891 at page 235**. See also **Ronald Kasibante Vs Shell Uganda Ltd Civil Suit No.542 of 2006 ULR 690**. That in the instant case, the 1<sup>st</sup> defendant never delivered the vehicle due to its own fault. No reason or explanation was given. That it had been agreed under clause 6 of the contract that the 1<sup>st</sup> defendant would refund the consideration paid by the plaintiff upon failure to deliver the motor



vehicle as a result of the defendant's default. Upon demand for the same, cheques were issued but they were dishonored by Barclays Bank. Further demands by the plaintiff's lawyers were ignored. That the 1<sup>st</sup> defendant not only failed to deliver the motor vehicle as agreed but also refused to refund the consideration advanced by the plaintiff and this constituted breach of contract. See **Kyarimpa Sarah Vs Harriet Nasozzi Hewett, Civil Suit No. 0794 of 2016.**

- [9] In the case of **William Kasozi Vs DFCU Bank Ltd, C/S No.1326 of 2000** it was held that;

*"Once a contract is valid, it creates reciprocal rights and obligations between the parties to it. I think it is the law that when a document containing contractual terms is signed, then in the absence of fraud, or misrepresentation the party signing it is bound by its terms."*

- [10] The agreement executed between the plaintiff and defendant created such reciprocal rights and obligations. The plaintiff paid consideration of USD 20,000 and the motor vehicle, the subject of the agreement, was to be delivered within ninety (90) days. This was never done by the 1<sup>st</sup> defendant. Upon failure to do this, the plaintiff demanded refund of the consideration as stipulated under Article 6 of the agreement for the sale of the motor vehicle and the 2<sup>nd</sup> defendant issued cheques which were dishonored by Barclays Bank for insufficiency of funds. See **item 3 of the plaintiff's trial bundle.** Further demands by the plaintiff's lawyers for payment were in vain. These actions indeed constitute a clear breach and this issue is therefore answered in the affirmative.



**Issue 3: What are the remedies available to the parties?**

- [11] It was submitted for the plaintiff 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. See **Section 61 (1) of the Contracts Act No. 7 of 2010** and **Ronald Kasibante Vs Shell Uganda Ltd Civil Suit No. 542 of 2006 [2008] ULR 690** and being the injured party, the plaintiff is entitled to remedies as prayed for in the plaint.
- [12] Regarding **special damages** it was submitted that it is indeed trite law that that special damages must not only be specifically pleaded but they must also be strictly proved. See **Gapco (U) Ltd Vs A.S. Transporters (U) Ltd CACA No. 18/2004**. Further that proving special damages doesn't always have to be by documentary evidence but may also be by direct evidence for example by evidence of a person who received or paid money or testimonies of experts conversant with the matters. See **Haji Asuman Mutekanga Vs Equator Growers (U) Ltd, SCCA No.7 of 1995**. That the plaintiff stated in his witness statement that he paid USD 20,000 upon execution of the contract between him and the defendant and the balance was to be paid upon delivery. Further that the 2<sup>nd</sup> defendant issued bank cheques numbers 000036,000037,000038,000039 dated 01/09/2017 of USD 20,000 in favour of the plaintiff. The same were tendered as Exh P2 on the plaintiff's trial bundle. This is therefore proof that the plaintiff paid to the defendant the said monies, since the defendant would not have accepted to refund monies that it never received. In any case this evidence is not challenged. I accordingly award a sum of USD 20,000 as special damages.



- [13] In regard to **general damages** it was submitted for the plaintiff that general damages are damages which the law implies or presumes naturally to flow or accrue from the wrongful act and may be recovered without proof of any amount. They are the direct and probable consequence of the act complained of. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. See Kampala District Land Board & George Mitala Vs Venansio Babweyana, Civil Appeal No. 2 of 2007; Kasekya Kasaija Syivan Vs Attorney General Civil Suit No. 1147 of 1998 and Deox Tibeingana Vs Jjuuko Martin Civil Suit No. 35 of 2016. That the plaintiff has suffered great inconvenience due to non-supply of the motor vehicle. He has also suffered serious disturbance and mental anguish and distress in pursuing the defendants to refund his money. That taking all these matters into consideration, it is appropriate that this Court awards the plaintiff general damages.
- [14] It should be noted that general damages are compensatory in nature in that they should restore some satisfaction, as far as money can do, to the injured plaintiff. See. Takiya Kashwahiri & Anor Vs Kajungu Denis, C.A.C.A No. 85 of 2011. From the record, the plaintiff has suffered enormous inconvenience and suffering due to the actions of the defendant in failure to deliver the motor vehicle as agreed and further refusing to refund the monies paid in consideration. In light of the applicable principles of law, I shall award **Ugx 20,000,000/=** general damages as a suitable and sufficient sum to atone for the injury and inconvenience occasioned to the plaintiff. I believe this will restore to the plaintiff some satisfaction.



- [15] Regarding **punitive or exemplary damages** it was submitted that these are awardable to punish, deter, express outrage of court at the defendant's egregious, highhanded, malicious, vindictive,oppressive and or malicious conduct. See Hassan Awdi Vs Ali Wadi, Advan Fanjan Redhi and Awdi Sonic (U) Ltd Civil Suit No.95 of 2012. In the instant case the plaintiff has shown in paragraph 7,14 to 17 of the witness statement that despite several demands, the defendants refused to deliver the said vehicle or to refund the consideration. The plaintiff prayed that this court awards punitive damages against the defendant for such misconduct. No particular amount was proposed.
- [16] From the facts of this case, it is apparent that the defendant's intention is to maliciously keep the plaintiff out of the use of his money and for unjust enrichment. All this was done intentionally and in bad faith. In the circumstances therefore, the plaintiff is awarded **Ugx 4,000,000/=** as punitive/exemplary damages.
- [17] Regarding **interest** the plaintiff prayed that court awards him interest at the rate of 25% on the general damages and on the USD 20,000. See **Section 26 (2) CPA**, Mohanlal Kakubhai Radia Vs Warid Telecom Ltd, HCCS 234 of 2011, Star Supermarket (U) Ltd Vs Attorney General CACA 34 of 2000. The plaintiff also prayed for costs of the suit pursuant to **Section 27(2) CPA**. See also Harry Ssempe Kambagambire David Civil Suit No. 408 of 2014.
- [18] In Premchandra Shenoi and Anor Vs Maximov Oleg Petrovich, SCCA No.9 of 2003. The Supreme Court held thus:

*"In considering what rate of interest the respondent should have been awarded in the instant case, I agree that the principle applied by this Court in SIETCO Vs NOBLE*



***BUILDERS (U) Ltd** (supra) to the effect that it is a matter of the Court's discretion is applicable. The basis of awards of interest is that the defendant has taken and used the plaintiff's money and benefited. Consequently, the defendant ought to compensate the plaintiff for the money. In the instant case the learned Justices of Appeal, rightly in my opinion, said that the appellants had received the money for a commercial transaction. Hence the Court rate of 6% was not appropriate and I agree with them. The rate of interest of 20% awarded by the Court of Appeal was more appropriate"*

Following the above discourse and guidance, the court finds a **rate of interest of 6%** on the sums awarded herein to be just and fair and is accordingly imposed. The rate shall apply to the outstanding balance and respective damages claimed and awarded.

- [19] The plaintiff has succeeded on all issues in the case and court sees no compelling and justifiable reasons for not awarding him costs of the case. See **National Pharmacy Ltd** (supra) and **Jenniffer Rwanyindo Aurelia & Anor Vs School Outfitters (U) Ltd, CACA No. 53 of 1999.**

**Section 27 (1) of the CPA** is instructive on the matter and states:

*"(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of the incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and give all necessary directions for the purposes aforesaid"*

Accordingly, the plaintiff is also awarded costs of the suit.

[20] **Resultantly**, upon the plaintiff proving his case on a balance of probabilities, judgment is accordingly entered against the defendant and the court hereby makes the following **orders** ;

- (i) **that the defendant immediately pays to the plaintiff a sum of USD 20,000 (USD twenty thousand only) being special damages;**
- (ii) **that the defendant pays to the plaintiff a sum of Ugx 20,000,000/= (Uganda shillings twenty million only) as general damages;**
- (iii) **that the defendant pays to the plaintiff a sum of Ugx 4,000,000/= (Uganda shillings four million only) as punitive damages**
- (iv) **that the sums awarded in (i), (ii) and (iii) above shall each attract an interest rate of 6% from the date of Judgment till payment in full;**
- (v) **that the defendant pays costs of this suit.**

**Dated, signed and delivered at Kampala this 17<sup>th</sup> day of September, 2021**



**Duncan Gaswaga**

**JUDGE**