

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

CIVIL SUIT NO.387/2000

KASUJJA RONALD SENDUSU:..... PLAINTIFF

VERSUS

NTULUME GODFREY :..... DEFENDANT

BEFORE THE HON. LADY JUSTICE M.S ARACH- AMOKO

JUUGMENT

The Plaintiff, Ronald Kasujja Sendusu, claims from the Defendant, Ntulume Godfrey, special damages of Shs. 19,933.000 general damages and costs. The Plaintiff also prays for the costs of the suit, and any other relief this court deems fit.

The brief facts of the case are that by a Sale Agreement dated 9/4/99, the Defendant agreed to sell and the Plaintiff agreed to buy from the Defendant, M/v Reg. 182 UED Toyota omnibus at Shs 6.3 million. The Plaintiff paid Shs 4,350,000 upon execution of the agreement. It was agreed that the balance of Shs. 1,950,000 would be paid after two months from that date. The Defendant handed over the vehicle to the Plaintiff together with a photocopy of the log book and a KCC registration book indicating that the vehicle was a passenger service vehicle - 'PSV'.

When the Plaintiff handed over the vehicle to his driver to use as a commuter taxi, it was discovered that the vehicle was never licensed as a PSV. As a result, the Plaintiff could not use it as a commuter taxi, and failed to pay the balance within the time agreed. The Plaintiff approached the Defendant for the original logbook so that he could apply for the PSV license. The Defendant refused and demanded the balance. After some negotiation, the parties signed a second agreement on the 15/6/99 under which the Plaintiff paid Shs. 200,000; and the Plaintiff was given a grace period of two months within which to pay the balance of Shs.1,750,000. It was further agreed that in default, the outstanding balance would attract interest at a rate of 15 percent per week for a period of two weeks. If the money was not paid within the two weeks, the

Plaintiff would sell off the vehicle and pay the Defendant's money. The Plaintiff failed to pay the money as agreed. The Defendant impounded the vehicle through M/S Solester Auctioneers and had it sold. In this suit, the Plaintiff wants his Shs.4,550 he paid for the vehicle and Shs.1,163,000 repair charges refunded; plus Shs 13,060,000 as loss of income from the non-use of the vehicle together with general damages for breach of contract and interest.

The Defendant admits that the sale of the said vehicle took place on the terms of the agreement. That the Plaintiff paid Shs. 4,350,000 as down payment and Shs.200,000 under the second agreement of 15/6/99 and the terms thereof. The Defendant however avers that the Plaintiff breached the terms of the agreements when he failed to pay. The Defendant therefore instructed auctioneers who impounded the said vehicle and sold it. The Defendant also counterclaims against the Plaintiff for Shs. 100,000 as auctioneers fees, general damages for breach of contract and any other eventual losses for delayed payment.

The Court agreed upon the following issues for determination:

- 1) Whether there was breach of contract by either party.
- 2) Whether the Plaintiff is entitled to the relief sought.
- 3) Whether the Defendant is entitled to the counterclaim, if so,
- 4) Quantum.

The Plaintiffs counsel called three witnesses, including the Plaintiff in a bid to prove the Plaintiffs case. On the 2/11/2000 when the Plaintiffs closed his case, the Defendant's counsel applied for an adjournment to open the defence case. The suit was adjourned by consent of both Counsel to 30/1/2001.

On the 30/1/2001, both the Defendant and his counsel were absent from court, when the case was called for hearing at 9.07. The case was stood over till 9.30 a.m. Later at 9.45 am, the position was still the same. The court therefore allowed the matter to proceed ex parte and Mr. Muhanguzi the Plaintiffs counsel made submissions.

Regarding the first issue, Mr. Muhanguzi submitted that the Plaintiff had adduced evidence that he did not live up to the 1st Agreement because the vehicle had been presented as a PSV, whereas

it was not. That the Plaintiff could not therefore use the vehicle as a commuter taxi as agreed. That the Plaintiff had also adduced documentary evidence from the Registry of Motor Vehicles (exhibit P4) indicating the use of the vehicle as a panel van, and not a PSV vehicle. It could not therefore be used as a PSV vehicle. That the vehicle was thus misrepresented, and could not meet the purpose the contract. That the Defendant had used the KCC Registration book (Exhibit P3) to dupe the Plaintiff that the vehicle was a PVS. Furthermore, the photocopy of the logbook given to the Plaintiff showed different particulars from the motor vehicles registry. When these facts were unearthed, the Plaintiff went back to the Defendant and they entered into another agreement where it was agreed that if the Plaintiff fails to pay the outstanding balance within 2 weeks, interest would be charged at 15 percent per annum; and that the Plaintiff would have to sell the vehicle and to pay the outstanding balance. The Plaintiff failed to meet the deadline and before he could find a buyer, the Defendant instructed Solester Auctioneers who impounded the vehicle; and sold it. In the circumstances, the Defendant is the one who breached the contract.

I respectfully agree with Mr. Muhanguzi's submission. The Plaintiff testified that he wanted to buy a commuter taxi. He was introduced to the Defendant who was then the Chairman of Wakaliga - Natete Taxi Operators in the New Taxi Park. PW2, a taxi driver also testified that the Plaintiff asked him to look for an omnibus to do taxi business, and he sighted the said vehicle, belonging to the Defendant. After negotiation they reached a deal, and the Plaintiff bought the vehicle. PW2 says he drove the vehicle to the Plaintiffs home and thereafter, the Plaintiff got another driver, who started using the vehicle; but who complained that the vehicle was not only in a poor condition, but that, he was being disturbed by the Police every now and then because the vehicle had no PSV. The Plaintiff testified that the Defendant gave him two months to pay the balance of Shs. 1,950,00 because they expected that the vehicle would bring Shs.40,000 per day, that is Shs. 1.2. million per month and in two months, the vehicle was expected to bring 2.4 million shillings. That after signing, the Defendant gave him a photocopy of the log book and a KCC registration book (Exhibit P3). I have seen the book issued by Kampala City Treasure's Department for the year 1998/1999 - entitled PSV; and describing the category and usage of the vehicle as PSV. The sticker is No.3 53. The book does not however bear any official stamp of KCC, or the name of the owner of the vehicle or his address. There are some scribbling inside, which look suspicious. No wonder, the Police harassed the driver with it. The Plaintiff also

testified that the stamp in the logbook was forged. Later on when he made a search at the Registry of Motor Vehicles he discovered that the vehicle was a Panel Van with a seating capacity of only two people. He tendered the URA report as Exhibit P4. It does not indicate anywhere that the vehicle has ever been registered as a PSV. In the photocopy of the log book, the words "Penal Van" were deleted and replaced with "M/bus". This explains the conduct of the Defendant when he refused to give the Plaintiff the original logbook when the Plaintiff demanded it to enable him to obtain the license. Exhibit P4 also indicated that the registered owner of the vehicle was one Sherrali Mohammed; and not the Defendant.

The Plaintiff also testified that he made frantic efforts to try and get a buyer after he failed to pay under the second agreement. He even repaired the vehicle and later on proposed that the vehicle be put where it could be sold, but the Defendant refused and resorted to auctioneers instead.

On the basis of the evidence on record, I find that the Plaintiff has proved that the Defendant's conduct amounted to breach of contract, and/or misrepresentation, by holding out that the said motor vehicle had a PSV license whereas not, by uttering a dubious Registration book and by seizing the vehicle from the Plaintiff in disregard of the second agreement which entitled the Plaintiff to sell it. I therefore hold that the Defendant breached the contract.

On the 2nd issue, having held as I have in the first issue, I rule that the Plaintiff is entitled to the refund of the money he paid for the vehicle, that is Shs.4,550,000. The Plaintiff also testified that he repaired the vehicle in order to be able to use it and to sell it. That it was in a poor condition, so he had to overhaul the engine. He has produced receipts worth Shs. 1,153,000 as repair expenses. I award him this sum.

As for the loss of expected income of Shs. 19,933,000, from the earnings of the vehicle, the Plaintiff testified that he expected to earn Shs.40,000 per day with effect from 9/4/99. He said he got the figure from Mr. Mukasa, a taxi driver who also owns a taxi. He did not produce any documentary evidence from Mr. Mukasa's records for example, to prove this assertion. He claims that he used the vehicle for a short time, but did not produce any such records. In the circumstances, I find this item of claim not only speculative, but unsupported by any documentary evidence and therefore not proved. The said Mr. Mukasa was not even called to

give evidence in support of the rates. It is trite law that special damages must not only be pleaded but strictly proved. Where no evidence is led to prove special damages, that claim must be disallowed. See:

SENYAKAZANA -vs- ATTORNEY GENERAL (1984) HCB; and MAKUMBI -vs- KIGEZI AFRICAN BUS CO LTD (1986) 69. The claim for loss of expected income is therefore disallowed.

As for general damages, since I have held that the Defendant breached the contract by selling to the Plaintiff a vehicle that the Plaintiff could not use for the purpose, and by refusing to give the Plaintiff the log book to enable him to obtain a PSV license, and later on selling the vehicle in disregard of the 2nd agreement, occasioning the Plaintiff loss and inconvenience, the Plaintiff would be entitled to general damages; and I award him Shs. 1 million as general damages.

Regarding the 3 issue, since, the Defendant did not present, any evidence, the Defendant has therefore not proved its counterclaim against the Plaintiff, and it is dismissed with costs.

The last issue is the quantum of damages. I have already dealt with this under the 2'' issue. In the result, judgment is entered against the Defendant as follows:

- 1) Shs.4,450,000 as money spent on the vehicle.
- 2) Shs.1,153,000 as repair charges.
- 3) Shs 1 million, general damages.
- 4) Interest on 1, 2, and 3 at 15 percent per annum, from date of filing till payment in full.
- 5) Costs of the suit.

M. S. Arach-Amoko

JUDGE.

13/3/02.

Judgement delivered in the presence of:

- 1) Mr. Muhanguzi George for Plaintiff

- 2) Plaintiff
- 3) Defendant absent
- 4) Defendant Counsel absent
- 5) Okuni Court Clerk.

M. S. Arach-Amoko
JUDGE.
13/2/2002.