

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 636 OF 1996

ANTHONY BYARUHANGA :::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

HASSAN BAGADA :::::::::::::::::::::::::::::: DEFENDANTS

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

JUDGMENT

The Plaintiff filed a suit against the Defendant for Shs.2m, general damages, interest and costs.

The Plaintiff alleged in his plaint that he jointly purchased motor vehicle number UPP 524 from the Defendant on the 30th December, 1994. The cost of the vehicle was Shs.3.5m. The Plaintiff contributed Shs.2m. The Defendant connived with the seller one Nabiswa, to register the vehicle in the Defendant's name alone, instead of their joint names. The Defendant has denied him the use of the said vehicle in breach of the agreement between them; hence this suit.

In his defence, he admitted the joint arrangement and the purchase price of Shs. 3.5m, but contended that they contributed 50% each. He denied that the plaintiff paid Shs. 2m as alleged and connived with Nabiswa to transfer the said vehicle into his name alone. He pleaded that the transfer forms were actually signed by both of them. That when the transfers were lodged with URA, URA insisted on transferring the vehicles into his names only. The defendant contended further that the plaintiff was in custody of the vehicle for a full year and counter claimed the sum of Shs. 2,580,000/ as part of the profits due to him for that period together with interest at 40% p.a, general damages and costs.

The plaintiff filed a reply denying the counter claim.

The parties agreed on the following points at the hearing:

That the parties purchased motor vehicle No. UPP 524 from Nabiswa on 30/11/94; at Shs. 3.5m. The motor vehicle was for transportation (taxi) business. It was supposed to be registered in the defendant's names. The defendant did not connive with Nabiswa to have the vehicle registered in his names only. The transfer forms were signed by Mr. Nabiswa and both plaintiff and the defendant.

The parties disagreed on:

1. The contributions.
2. Who had possession of the vehicle, and when.
3. The remedies sought by either party.

The following issues were framed and agreed on for determination by the Court:

1. What were the parties' contributions towards the purchase of the motor vehicle?
2. Who had possession of the vehicle after purchase.
3. Whether the Plaintiff is entitled to the relief sought.
4. Whether the Defendant is entitled to the counter claim.

On the first issue, the Plaintiff maintained in his testimony before Court that he paid Shs.2m while the Defendant paid Shs.1.5m. The Defendant on the other hand testified that they paid Shs.1.75m each towards the purchase of the vehicle. That the purchase was Shs.3m. The Plaintiff abandoned his claim for Shs.2m during the trial and settled down to Shs.1.75m. The parties' contribution is therefore Shs.1.75m each.

The second issue is in respect of possession of the vehicle after purchase. The Plaintiff testified that the vehicle was delivered to them on the 30/12/1994, that is, the same day they paid for it. They were staying at the same Water Development camp at Masaka. They did not use the vehicle immediately. They kept it with a friend called Badru for 4 months. The transfer was made in April 1995 into the defendant's names. The plaintiff was not happy and asked for a refund. The defendant told him to wait for 4 months, then he would refund the money within the 4 months. The plaintiff tried to get the vehicle from Badru in September 1995. He tricked Badru that he was sick and he needed to use the vehicle for one hour then he

would return it. He got the vehicle and parked it at the yard. He waited for the defendant to come so that they could discuss the matter, he didn't until December. The defendant then reported him to the police in Hoima. The police tried to solve the problem through the L.C.3 Chairman called Kaboyo. The vehicle was parked at the Town Council Yard for safe custody. He doesn't know what happened to the vehicle since then.

In cross examination the plaintiff stated that Badru kept the vehicle from January to September 1995. Damulira kept it from September 1995 to January 1996; after which he handed it to the L.C.3 Chairman of Hoima. The log book was kept by the defendant. The defendant on the other hand testified that after purchasing the same, he handed the vehicle to the plaintiff. He only kept the log book. In Masaka they kept agreed to give the vehicle to Badru a friend of the plaintiff to use for transportation and to hand over the money to the Plaintiff who would in turn give the Defendants share. In April 1995 they went to URA and the vehicle was transferred into his names because the Plaintiff had no TIN number. He continued to keep the log book. The Plaintiff had the keys to the car and stayed with it up to December 1995. He did not return the vehicle to Badru. He kept it with Damulira instead. He never gave him any money. The Defendant last saw the vehicle in April 1995 when it was still with Badru. The Plaintiff kept on dodging him every time he asked for the vehicle, so he reported the matter to police. He reported the matter to the L.C.3 Chairman Kaboyo, who ordered the Plaintiff to bring the vehicle. He did. They then decided to sell the vehicle and share the proceeds. The vehicle was parked at the Hoima Town Council. It was not sold.

The L.C 3 Chairman Mr. Kaboyo (PW 3) confirmed that the two gentlemen had a dispute over the said vehicle. The dispute was reported to them. They ordered the vehicle to be brought from Masaka to Hoima. The Plaintiff brought the vehicle and it was parked at the Hoima Town Council Yard for sale.

From the evidence on record, it is clear that the vehicle was kept with Badru for the first four months with agreement of both parties. After the transfer in April 1995, trouble began between the parties. The Plaintiff removed the vehicle from Badru and kept it at Damulira's. In December 1995, the L.C 3 Chairman of Hoima ordered the Plaintiff to deliver the vehicle to Hoima. The Plaintiff did. The vehicle is parked there for sale. From this evidence, none of

the parties had possession of the vehicle after purchase. They kept the vehicle with 3rd parties, namely, Mr. Badru and Mr. Damulira respectively.

The 3rd issue is whether the plaintiff is entitled to the relief sought, that is the refund of the Shs. 1.75m contribution towards the purchase; together with interest thereon. The plaintiff's case is based on two premises.

Firstly, the plaintiff alleged that the defendant connived with Nabiswa seller, to transfer the vehicle into the defendant's name alone. It has now transpired and the plaintiff has admitted that they all signed the transfer forms. That the transfer was made in the defendants name alone because the plaintiff had no PIN number. This allegation therefore failed.

Secondly, the plaintiff alleged that the defendant breached the agreement when he denied him the use of the said vehicle, resulting into damages and loss of income. Again the evidence on record is to the effect that the plaintiff and the defendant agreed and kept the vehicle with Badru, a friend so that he could use it and pass on the proceeds to them to share. Both parties are silent as to whether Badru passed over any proceeds. Later on after the transfer into the defendants name only, the plaintiff says he became worried about his share so he tricked Badru and got the vehicle and took it to Damulira, where it stayed until December 1995 when he was ordered to deliver to Hoima. There is therefore no evidence to prove that the Defendant denied the Plaintiff the use of the said vehicle during the time when it was kept at Badru's place with both the consent, or the time it was kept at Mr. Damulira's place at the Plaintiffs request. The evidence infact shows that the Plaintiff had access to the vehicle from the time they bought it up to December 1995 when he was ordered by the Hoima L.C 3 Chairman to park the vehicle at the Hoima Town Council Yard. This allegation therefore fails. As a result, he is not entitled to the relief sought in the claim. His suit is frivolous and vexatious and it is accordingly dismissed with costs to the Defendant.

Finally, on the question whether the Defendant is entitled to the counterclaim comprised of Shs.2,580,000/, general damages and interest, I find that the Defendant has also failed to prove his claim. He pleaded in his counter claim that he was entitled to Shs.2,580,000/ being part of the profits due for the period between 1/1/95 to 6/1/96; when the vehicle was allegedly doing transportation. Apart from this mere allegation the Defendant has not produced any records of the amount of money fetched by the vehicle during the time when it was allegedly

used for transportation business. Special damages must not only be specifically pleaded but must be strictly proved as well. See: **Kyambadde Vs Mpigi District Administration (1983) HCB 44**. Secondly no material evidence is produced before this Court to guide me in the word of general damages prayed. In conclusion the Defendant has also failed to prove his counter claim and it is also dismissed with costs to the plaintiff.

M.S.Arach-Amoko

JUDGE

18.9.02