THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

HCT – 02 – CV – CA – 0023 – 2004

(Arising from Civil Suit No Gulu – 073 – 2003)

1. **THE CHAIRMAN KIDFA**
2. **THE CHAIRMAN KITGUM DISTRICT FARMERS ASSOCIATION::APPELLANTS**

VERSUS

ONEK OJOK CHRISTOPHER::::::::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

The appellants appealed against the judgment of the Chief Magistrate, Gulu, dated 26.08.2004 in Civil Suit Number 73 of 2003, whereby the respondent, as plaintiff, had sued them, as defendants, seeking to be declared the owner of motor-cycle Registration No. UAC 828T as well as general damages for breach of contract of sale.

The trial court decided the case in favour of the respondent against the appellants. Dissatisfied with the judgment, the appellants appealed to this court.

The appeal is premised on eight (8) grounds:

1. The learned Chief Magistrate was biased against the appellants and favoured the respondent.
2. The learned Chief Magistrate erred in law in holding that there was a contract of sale of Yamaha motor-cycle Registration No. UAC 828T between the appellants and the respondent.
3. The learned Chief Magistrate erred in law in admitting the alleged agreement of sale between the appellants and the respondent dated 25.05.2001 which misled him to come to a wrong conclusion.

4. The learned Chief Magistrate erred in law in holding that the appellants were in breach of the alleged agreement by not promptly introducing the respondent to Farmers Organization Secretariat after completion of payment for the purpose of transfer of document ownership.
5. The learned Chief Magistrate erred in law by allowing the respondent to depart from his pleading in his testimony.
6. The learned Chief Magistrate erred in law in holding that the respondent suffered damage.
7. The learned Chief Magistrate erred by giving irregular orders.
8. The learned Chief Magistrate erred in law by failure to evaluate the adduced evidence properly and as a result he came to the wrong conclusion.

By way of back ground, the respondent worked for the appellants as a District Coordinator for the period April –to December, 2000. The second appellant is a Company limited by guarantee, while the first appellant is Chairman of the first appellant. The appellant's main objective is to uplift the welfare of farmers in Kitgum District.

In the course of his employment, the respondent was availed a motor-cycle to use for his work. He was also offered to co-own and finally to have as his own once he paid a total purchase price of shs 2,500,000/= (Two million, five hundred thousand). He was to pay this amount in monthly installments, being deducted form his monthly salary

Though respondent left appellant's employment in December, 2000, he kept the motor-cycle and continued to pay the due installments, the last one being effected on 14.02.2003.

Having left appellant's employment, it was necessary to execute a written agreement regarding the transaction, and the same was executed between the second appellant and respondent on 25.05.2001. The same was exhibited at trial as exhibit PEx1.

Having completed payment for the motor-cycle on 14.02.2003 respondent thereafter demanded of the appellants for the necessary documents that would effect a

transfer of the motor -cycle into his names. When these were not forthcoming from the appellants, plaintiff decided to institute suit, giving rise to this appeal

The defence agreed with the fact that arrangements had been made for respondent to purchase the motor-cycle in question. However the said motor-cycle being bought was owned by the Danida Secretariat and its other affiliated body: The Farmers Organization Secretariat (FOS) who had extended to the appellants financial and other material assistance, including provision of motor-cycle, and therefore the transfer of the same into the names of the respondent had to be done by the said Danida Secretariat and/or its affiliated body: The Farmers Organization Secretariat (FOS).

On completing payment of the installments for the motor-cycle, the appellants informed and sent the respondent to the Danida and the Farmers Organization Secretariat for purposes of having the motor-cycle transferred into his names, but the respondent refused to deal with them, insisting that the appellants had themselves to effect the transfer of the motor-cycle into his names.

The appellants, being not registered owners of the motor-cycle, had no capacity to effect the transfer of the motor-cycle into the respondent. The appellants role, they contended, was to act as agents of the Secretariat of DANIDA and in ensuring that respondent effected the requisite payments. Appellants thus contended that respondent had no case against them.

Court will deal with each of the first, second, third, fifth and seventh grounds in that order; and then consider the fourth sixth and eighth grounds together.

As to the first ground of appeal alleging bias against the learned trial Chief Magistrate, no substantial proof was availed before the trial court that the trial Chief Magistrate was related to the respondent, in that the latter was a son of the aunt of the Chief Magistrate. The Chief Magistrate ruled that he had no relationship with the respondent and saw no reason at all for him to withdraw from the trial of the case.

The appellants have not in anyway shown why this court should fault the decision of the trial Chief Magistrate on this point. The first ground of appeal fails.

In the second ground of appeal, the trial Chief Magistrate is stated to have erred in holding that there was a contract of sale of Yamaha motor-cycle Registration No. UAC 828T between the appellants and the respondent.

The evidence adduced at trial is that two written contracts were executed regarding the transaction.

The first contract executed on 14.07.2000 titled: **"MOTOR CYCLE PURCHASE AND CONTRACT BETWEEN FOS AND FO"** was between Farmers Organization Secretariat for Farmers Organization component of Danida Agriculture sector program support (FOS) and the second appellant.

Copy of this contract was tendered in evidence as exhibit DEX1. The second contract was executed on 25.05.2001 between the second appellant and the respondent. Its title is: **"MOTORCYCLE PURCHASE AND CONTRACT BETWEEN KIDFA AND CHRISTOPHER ONEK OJOK"** It was tendered in evidence as exhibit PEX1.

None of these contracts is denied by any of the witnesses whether for appellants or respondent.

The sum total effect of the two contracts is that the motor-cycle was sold to the respondent who fully paid for the same. The problem only arose when it came to effecting a transfer of its ownership into the names of the respondent. This aspect of the contract will be dealt with later.

On the evidence availed, this court finds that the learned trial Chief Magistrate was right to find as he did that there was a contract of sale of Yamaha motor-cycle Registration Number UAC 828J between the appellants and the respondent. The second ground of appeal fails.

Court finds no merit in the third ground of appeal since according to the court proceedings of the trial court, page 4 thereof, on 18.11.2003 the copy of the agreement dated 25.05. 2001 was tendered and admitted in evidence as exhibit PEX1 with no objection of the appellants and their counsel. The objections being advanced on appeal that it was a photocopy, that the same was signed on 25.05.2001 and that there is no indication as to who made the agreement, should have been made at the

trial as grounds for resisting the tendering in evidence the said agreement; and not at this stage of entertaining an appeal.

The fifth ground complains that the respondent departed from his pleadings in that respondent testified as to exhibit PEX1 when not pleaded in the plaint, that though the monthly payment pleaded in plaint is shs. 104,167/= respondent testified he was paying shs 200,000/= p.m; and that first appellant demanded of him shs 1,000,000/= when not pleaded.

While a party is bound by the pleadings filed in court by that party, it is not the law that whatever is mentioned in the evidence of a party, or that of a party's witness, must have been pleaded. This court therefore finds nothing wrong for the respondent to have testified about the demand from him by the first appellant of shs 1,000,000/=. Further, as already pointed out, exhibit PEX1 was produced in evidence with no objection from counsel for appellants. There was nothing wrong therefore for the respondent to testify about it. Court finds no merit in the fifth ground of appeal.

In the seventh ground, it is complained that the Chief Magistrate erred by giving irregular orders.

The orders that the learned Chief Magistrate made in his judgment were based upon the ultimate result of the trial. Based on that result, there was nothing irregular about any of the orders. This, of course, is not the same thing as saying that the learned Chief Magistrate reached a correct result at the end of the trial of the case. That finding awaits consideration of the remaining grounds of appeal.

Grounds four, six and eight of the appeal are considered together.

Ground four asserts that the learned Chief Magistrate erred in law in holding that the appellants were in breach of the alleged agreement by not promptly introducing the respondent to Farmers Organization Secretariat after completion of payment for the purpose of transfer of documents of ownership.

The sixth ground is to the effect that it was wrong of the trial Chief Magistrate to hold that respondent had suffered damage.

The eighth ground faults the trial Chief Magistrate of failing to properly evaluate the evidence adduced before him and thus coming to the wrong conclusion.

It is necessary to consider the evidence adduced at trial in some detail so as to be able to determine whether the learned Chief Magistrate, on the basis of the said evidence, arrived at the right conclusions as regards the complaints raised by these grounds.

The respondent tendered in evidence as exhibit PEX1 the agreement dated 25.05.2001 between him and the second appellant. The said agreement is very similar in its essential terms, to the one tendered in by the first appellant as exhibit DE1 dated 14.07.2000.

In both agreements it is clearly provided for that:

> **"The motor-cycle will be the property of the FOS until the motor cycle has been paid in full. During this period FOS will insure the motor cycle for third party only and pay for the license, which will be part of the FO operation fund"**

Both agreements stipulate that the purchaser, that is the respondent,

> **"Shall be the sole user of the motor cycle during the entire length of this contract"**

It follows therefore that from the very beginning of the transaction of purchasing this motorcycle, that the respondent was made aware, and in writing, that the motor cycle was the property of FOS and not KIDFA, the second appellant.

Indeed the log book of the motor cycle, exhibit DEX5, of which respondent had a copy, clearly showed that the registered owner of the motor cycle was Ministry of Finance/Farmers Organizations Secretariat, (FOS).

The evidence therefore adduced before the trial court clearly brought it out that the respondent knew, or ought to have known, that, at the completion of payment of the purchase price for the motor cycle, transfer of ownership into the respondent's names had to be done by the Farmers Organizations Secretariat (FOS) and not the second appellant, KIDFA.

Given the above state of affairs, it was not right therefore of the respondent to assert in his evidence at page 5 of the court proceedings that:-

> **" The defendant never responded till after this suit was filed. But FOS wrote to me to go and claim for original document from them**

last month but may kit (sic) was with KIDFA and not FOS. KIDFA was the one to clear and not FOS. They the ones and I paid money to them (sic)".

With respect, to the above answer does not tally with the essential terms of the two contracts relating to the transaction: Exhibits PEX1 of 25.05.2001 and DEX1 of 14.07.2000.

While it was appropriate for the respondent to communicate and pass through the second appellant with regard to having the motor cycle transferred into his names, the respondent would also be in his own rights, if he proceeded straight to FOS, as registered owner of the motor cycle and sought transfer documents from them, on providing them i.e. FOS, with proof of completion of payment of the total purchase price. After all, at the very beginning the very same respondent had collected the very same motor cycle from the FOS in Kampala. It would then be incumbent upon FOS to receive confirmation from the second appellant as to completion of payment for the motor cycle.

Had the respondent taken the course of action of directly contacting FOS about the issue of transfer, it is most unlikely that this litigation would have taken place.

This court has evaluated the evidence adduced at trial. It is to the effect that inspite of the fact that the respondent left employment of the appellants, he was allowed to continue using and having custody of the motor cycle availed to him on the basis that he was an employee of the appellants.

The appellants and FOS, in so acting as they did, extended great favour to the respondent; because both of them could have withdrawn the motor cycle from the respondent, refunded whatever he had paid towards purchase price, on the ground that he was no longer their employee.

Further favourable treatment was also extended to the respondent in that, in spite of his having failed to pay the due installments within the agreed upon periods stipulated in each of the agreements: exhibits PEX1 and DEX1, payment being completed as late as 14.02.2003, the appellants and FOS allowed the transaction to be completed. It was within the powers of the appellants and FOS to

have opted to treat the purchase agreement as breached by the respondent by reason of failure to pay regularly the due installments.

The appellants having so favourably treated the respondent, this court, on re-evaluating the evidence adduced at trial, sees no reason why the appellants and FOS should have stood in the way of having the motor cycle registered in the names of the respondent once he completed payment of the purchase price.

The assertion that the first appellant demanded shs. 1,000,000/= from the respondent, remained a bare statement from the respondent without in any way being proved. PW1 denied it totally. If the respondent was relying upon it as a particular of fraud, then he ought to have pleaded it, but he did not. The learned Chief Magistrate did not make any finding that the same had been proved. This court therefore takes the assertion as not at all having been proved.

This court, given the stated favourable conduct of the appellants (and FOS) towards the respondent, comes to the conclusion that, as soon as the respondent concluded payment of the purchase price, the appellants informed and required the respondent to report to FOS for purposes of having the motor-cycle registered into his names.

Having left the appellants' employment, it is understandable, if the appellants found it difficult to get in touch with the respondent. But the responsibility to avail himself to appellants and FOS was on the respondent, and he has himself to blame if he failed to do so.

The learned Chief Magistrate was therefore not right, given the evidence that was before him, to hold that:-

> **"I therefore find that the defendants were in breach of the agreement by not promptly introducing plaintiff to FOS after completion of payment for the purposes of transfer of document of ownership"**

This court, on re-evaluation of the evidence, finds that the appellants acted reasonably and responsibly towards the respondent; and that it was the respondent who acted unreasonably towards the respondent by failing to proceed to FOS, the registered owner of the motor cycle, and who had to effect the transfer, a fact the respondent knew, or ought to have known, from the very beginning of the transaction.

The learned Chief Magistrate thus erred when he failed to properly evaluate the evidence before him and thus he reached a wrong conclusion that the appellants breached the agreement. On the evidence adduced there was no breach committed.

There is also no evidence that was adduced by respondent as to the damage suffered. He kept and continued to use the motor-cycle even after leaving the appellant's employment; and even when he failed to pay installments within the period agreed upon in writing.

He completed payment of purchase price on 14.02.2003 and by 26.02.2003, the appellants had informed FOS of the fact. When FOS requested for further particulars regarding the transaction, the appellants promptly availed the same. The respondent had a duty, on his own, to get in touch with the appellants and FOS, so as to expedite the process of transfer. He never availed himself to FOS, insisting that the appellants had to avail all the necessary papers of transfer to him. He was wrong in this. He has himself to blame.

In the absence of evidence of damage suffered, the trial magistrate was not justified to award general damages to the respondent.

Grounds four, six and eight of the memorandum of appeal therefore succeed.

This appeal therefore partly succeeds. The following orders are made:-

(i) A declaratory order that respondent, ONEK OJOK CHRISTOPHER, is owner of motor-cycle registration number UAC 828T is hereby issued.

(ii) The respondent is to submit himself to the appellants and FOS for purposes of having the motor-cycle registered into his names.

The order of award of damages to defendant is hereby set aside.

As to costs, this court finds that this litigation could have been avoided, or at least halted at the earliest, if the parties had exhibited a spirit of resolving this matter by taking the requisite necessary steps. Had the respondents called upon FOS to effect the transfer, the matter would possibly have ended a long time ago.

As for the appellants, on 20.10.2003, when the case came up for hearing before the learned Chief Magistrate, there was a willingness on their part to settle the case. The

Chief Magistrate's Court adjourned the case to record a consent judgment on 30.10.2003. The same was never recorded. No reason was given. The appellants and respondent, instead, proceeded to a full hearing of the suit, resulting into this appeal. On appeal, not all grounds have been successful. It is therefore the view of this court, given the above considerations, that each party bears its own costs of the appeal and those in the court below. It is so ordered.

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Remmy K. Kasule

Judge

29th August, 2008