

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CIVIL SUIT NO.747 OF 2005

KIRUNDA FAISAL ::::::::::::::::::::::::::::::::::: PLAINTIFF

**VERSUS**

JJUKO JAMES ::::::::::::::::::::::::::::::::::: DEFENDANT

**BEFORE: HON. JUSTICE REMMY K. KASULE**

**JUDGMENT**

The Plaintiff sued the defendant to recover shs.6,000,000/= being the balance due on purchase price of a Saloon Motor-Vehicle he sold to the defendant. He also claimed interest at 5% per month on the said sum due as well as special and general damages.

The defendant denied being liable to the Plaintiff, contending that he paid to the plaintiff in full for the Motor-vehicle.

Both parties are agreed that the plaintiff sold to Defendant Motor-Vehicle Mark II Model 1993, registration number UAF 320D at a purchase price of shs.8,200,000/= without taxes and registration fees. It is also agreed that at all material time the defendant took possession of the Motor-Vehicle as well as its log book.

The issues framed for determination by Court are whether or not the defendant is indebted to the Plaintiff as claimed in the plaint; and what remedies are available to the parties. Both plaintiff and defendant respectively testified in person. None called any witness, though each one had indicated, at scheduling, to call some witnesses.

As to the first issue, both plaintiff and defendant were agreed that the purchase price of the Motor-vehicle of Ug.Shs.8,200,000/= was an equivalent, at the material time, to

US\$4864. Thus when defendant paid US\$300 on 31.12.01 [Exhibit D1] the balance of purchase price remained US\$4564. Plaintiff and Defendant were also agreed that when Defendant paid plaintiff US\$2600, that is Ug.Shs.5,200,000/= on 27.10.03 [Exhibit D2] the balance due remained Shs.3,000,000/=.

Therefore on the evidence adduced before court, both oral and documentary, the basis of the plaintiff's claim is the sum of Shs.3,000,000/= balance due on the purchase price. Court finds it necessary to make this specific finding because of the nature of pleadings in the case. In paragraphs 3 and 7(a) of the plaint, the sum claimed as principal sum is Shs.6,000,000/=. Yet in paragraph 4(c) of plaint Shs.3,000,000/= is stated as the balance of the purchase price due. The defendant in the Written Statement of defence paragraph 4 thereof, acknowledged Shs.3,000,000/= as the balance on the purchase price but contended that the defendant paid the same to the plaintiff.

Court finds that the plaintiff, in light of the evidence adduced, should have amended the plaint as to the exact amount claimed by way of balance of purchase price due. Court however finds the failure of the plaintiff to amend his pleadings as having caused any miscarriage of justice to defendant since the exact sum claimed as balance of purchase price due of Shs.3,000,000/= is lower than the Shs.6,000,000/= claimed in the plaint. In any case both sums are based on the same facts, all availed to the defendant at commencement and throughout trial of the case.

The plaintiff contends that the Defendant is liable to pay to him the Shs.3,000,000/= balance of the purchase price of the Motor-Vehicle because he, defendant, was, from the very beginning of execution of the contract of purchase of the Motor-Vehicle liable to pay for the taxes and registration fees of the motor-vehicle in Uganda.

According to plaintiff this is why, in the first acknowledgment of payment of US\$300 dated 31.12.01 it is clearly stated that the balance of US\$4564 is ***“N.B without Reg. in Uganda.”*** According to plaintiff, it therefore follows, that the balance of purchase price

yet due, stated in exhibit D2 dated 27.10.03 is exclusive of the taxes and registration fees of the motor-vehicle in Uganda, which were the responsibility of the defendant.

Plaintiff's further testimony is that by 04.11.03, defendant had availed the money for taxes and registration of the Motor-vehicle in Uganda. The motor vehicle had actually been registered in Uganda in the names of the Plaintiff by the 01-11-03 according to exhibit P2, the log book. The purchase price of Ug.Shs.8,200,000/= together with the money paid as taxes and registration fees: Ug.Shs.3,800,000/= had brought the total purchase price of the vehicle to Shs.12,000,000/=. It is by reason of this, after payment of the taxes and registration of the motor vehicle that plaintiff and defendant met and executed another agreement exhibit P1 clearly stating the total amount constituting the purchase price, with taxes and registration fees inclusive, and the balance the defendant was yet to pay, of this total purchase price. The defendant was and is thus liable to plaintiff for the balance due stated in exhibit P1 as the defendant never paid the same since its execution on 04.11.03.

The defendant, on his side, denies he is liable to pay any money to the plaintiff on the basis of exhibit P1. According to defendant, Plaintiff was liable to pay for the taxes and registration of the motor – vehicle in Uganda since plaintiff did not pay for these taxes and fees, but the defendant is the one who raised the money that paid for them, which amount was above Shs.3,000,000/= the balance of the purchase price due, plaintiff had nothing to claim from the defendant. Defendant regarded himself as having paid in full the total purchase price of the motor-vehicle to the plaintiff.

The law with regard to a written contract is that where the contract is in writing, its terms can be ascertained by means of documentary evidence. Where these are clear, a court must give effect to the terms. It is not the duty of the court to rewrite an expressly stated contract for the parties. See ***D.J.Bakibinga: Law of Contract in Uganda: page 35.***

*Cheshire and Fifoot's Law of contract, 10<sup>th</sup> Edition, Butterworth's [M.P. Furmston – Editor], at page 107 explains further that:-*

*“If the extent of the agreement is in dispute, the court must first decide what statements were in fact made by the parties either orally or in writing--- If the contract is wholly in writing, the discovery of what was written normally presents no difficulty, and its interpretation is a matter exclusively within the jurisdiction of the Judge. But on this hypothesis the courts have long insisted that the parties are to be confined within the four corners of the document in which they have chosen to enshrine their agreement. Neither of them may show evidence that his intention has been misstated in the document.”*

The last part of the above quotation of the learned author is in essence the **“Parole evidence Rule”** provided for by sections 91 and 92 of the Evidence Act, Cap.6.

Applying the above principles of the law to the facts of this case, Court observes that exhibit D1 is clear that, as of 31.12.01, when the purchase price of the vehicle was agreed upon, the amount agreed upon was exclusive of expenses required to register the vehicle in Uganda. These expenses in the understanding of this court, ordinarily mean the taxes and fees payable for registration of a Motor-Vehicle in Uganda. Defendant adduced no evidence to establish that this is not what was meant in exhibit D1. Defendant does not dispute that exhibit D1 is genuine. As to exhibit D2 dated 27.10.03, both plaintiff and defendant acknowledged how much [i.e Shs.5,200,2000] had been received of the purchase price, and the balance still outstanding [Shs.3,000,000]. Defendant did not dispute the genuineness of Exhibit D2. He offered no explanation as to why he did not call upon the plaintiff to state in this exhibit that the sum paid together with the balance due included the sums of money that would be required to pay for taxes and registration fees of the motor-vehicle in Uganda, or that the plaintiff was responsible to meet the expenses for the said taxes and registration fees. That defendant did not do so, lends credence to the plaintiff's assertion, that the defendant was to meet the expenses for taxes and registration fees in addition to the payment of the total purchase price of Shs.8,200,000/=.

On the evidence adduced, it is not in-dispute that on 04.11.03, both plaintiff and defendant executed exhibit P1; a vehicle sales agreement. It is on this date that the defendant took possession of the motor-vehicle log book, exhibit P2. This log book clearly showed that all taxes due on the vehicle had been paid and the vehicle had been registered in Uganda in the names of the plaintiff. This had been done on 01-11-03. The defendant therefore knew or was in a position to know by 04-11-01, that all taxes and registration fees had been paid for the vehicle. Indeed both the evidence of plaintiff and defendant is agreed that defendant had provided the money for the payment of taxes and registration. Defendant therefore was in no doubt that as at 04.11.03, part of the total purchase price stated to be of Shs.12,000,000/= had gone to payment of taxes and registration fees of the motor-vehicle. This must be the reason why defendant agreed to be stated in the agreement: exhibit P1 that:-

**“NINE MILLION ONLY HAS BEEN PAID CASH THE BALANCE OF THREE MILLION WILL BE PAID WITHIN TWO MONTHS FROM THE ABOVE DATE i.e (4/11/03 – 4/01/04) ORIGINAL LOGAL (sic) BOOK TO BE TRANSFERRED INTO HIS NAMES SO AS TO PROCESS THE BANK LOAN AND PAY THE BALANCE AS AGREED AND HE HAS ISSUED TWO CHEQUES NOS 000509, 000510.”**

Defendant acknowledged putting his signature on exhibit P1, having taken the Log Book, and also having issued the two cheques, exhibits P3 and P4, each one in the sum of Shs.1,500,000/= both totaling to Shs.3,000,000/= the balance of the purchase price due from defendant to plaintiff. Defendant offered no plausible explanation why he conducted himself and did all this, if he, as he asserted in his pleadings and in his evidence, he was not the one responsible to pay for the taxes and registration fees of the motor – vehicle in Uganda, and not the plaintiff.

Court also finds that the issuance of the two cheques, exhibits P3 and P4, both in the total sum of money, the balance due, is further confirmation and acknowledgement on the part of defendant that

he owed to plaintiff a balance of Shs.3,000,000/= on the purchase price. That the cheques were presented for payment and were dishonoured is further proof that the defendant is still liable to the plaintiff for the amount.

The answer of Court to the first issue is that the defendant is indebted to the plaintiff in the sum of Shs.3,000,000/= being the balance due on the purchase price of the motor-vehicle.

The second issue is what remedies is the plaintiff entitled to.

In paragraph 4(c) of the plaint the plaintiff prays for interest of 5% per day of the sum due, that is shs.3,000,000/=. The plaintiff bases this claim on paragraph (iii) of the vehicle sales agreement, exhibit P1. A calculation of this interest would amount to payment of Shs.150,000/= per day as interest. In a month this would amount to Shs.4,500,000/= such an interest, in the considered view of Court, is unreasonable by reason of its being too high. Court refuses to award the same. Instead, Court appreciates that the plaintiff is a business person engaged in the business of importing and selling motor-vehicles. In the considered view of Court, plaintiff will be adequately compensated if he is awarded interest at a commercial rate every year he has been deprived use of his money. Accordingly the plaintiff is awarded interest at the rate of 20% p.a. on the sum due of Shs.3,000,000/= the said interest to run from 04.11.03 till payment in full.

In view of the nature of interest awarded Court awards no general damages to plaintiff. As to special damages of Shs.500,000/= being cost of towing the Motor – Vehicle to Katwe Police Station, plaintiff did not testify that he paid this sum. The same is not awarded to him.

Accordingly Judgment is entered for the Plaintiff against the defendant in the sum of

- (a) Shs.3,000,000/= principal sum, and
- (b) Interest on the sum in (a) above at the rate of 20% p.a from 04.11.03 till payment in full.

As to costs, the plaintiff, as the successful party, is awarded the same and court finds that the complexity of the issues involved in the case, entitle the plaintiff to the costs taxed at the High Court scale.

**Remmy K. Kasule**

**Judge**

**11<sup>th</sup> May 2009**