

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

**CIVIL SUIT NO. 457 OF 2005**

**NOAH N. KASAATO ::::::::::::::::::::::::::::::: PLAINTIFF**

*Versus*

**LUKWAGO BRUNO & ANOR ::::::::::::::::::::::::::::::: DEFENDANTS**

**BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA**

**JUDGMENT**

Through M/S Mwesige Mugisha & Co. Advocates & Solicitors the plaintiff Noah Kasaato filed this suit for judgment against the defendant for:

- a) A declaration that impounding of the suit vehicle was unlawful.
- b) Special damages.
- c) General damages for (i) breach of contract (ii) impounding of the vehicle (iii) inconvenience caused.
- d) Interest on special damages at 30% per annum from the date of filing of the suit until payment in full.
- e) Costs of the suit.
- f) Any other appropriate relief.

The brief facts constituting the cause of action are that on or about the 20<sup>th</sup> December 2002, the plaintiff purchased a motor vehicle Reg. No. UEB200, Toyota Hiace (Kamunye) Engine number 211598003, Chassis No. LIT6IV-0107222 from the 1<sup>st</sup> defendant Lukwago Bruno at an agreed purchase price of UGX 4.300.000= . He paid 4,000,000/- at the time of the agreement and left a

balance of 300,000/- payable within one month of the date of agreement. At the time of the agreement, the suit vehicle was still registered in the names of the 1<sup>st</sup> defendant and later the plaintiff after payment of the last installment. The plaintiff took ownership and possession of the suit vehicle and just after 4 days, the PSV license expired. Since the plaintiff was by then not yet registered as owner, he could not renew the license and he had to park the vehicle at Kyasampawo parking yard and later at MM Pub at a cost of sh.3000/- and 2000/- per day respectively.

Around and/or on 13<sup>th</sup> November 2003, a police woman came and took the suit vehicle from MM Parking and Pub where it had been parked and towed it away to Nateete Police Station at the instructions of the 1<sup>st</sup> respondent. Since then, the vehicle has disappeared and despite the plaintiff's demand for release the 2<sup>nd</sup> defendant has never taken any action. Both the plaintiff and 1<sup>st</sup> defendant litigated over the same motor vehicle in the Chief Magistrate's Court of Mengo and the plaintiff lost the case in **Civil Suit No.502 of 2004**.

At the trial of the suit, the following issues were framed for determination:

1. Whether the suit by the plaintiff is res-judicata .
2. Who breached the contract of sale of the suit vehicle?
3. Whether the servants of the 2<sup>nd</sup> defendant at the instance of the 1<sup>st</sup> defendant impounded the vehicle.
4. If so, whether the impounding was unlawful.
5. Whether the plaintiff suffered loss or damages.
6. What reliefs are available to the parties?

I will start by resolving issue one whether the suit is res-judicata, before I delve into analyzing the evidence adduced by both sides at the trial.

It should be noted that this issue arose at the commencement of the hearing of the case. However, Justice Mwangusya J. (as he then was) did not decide on it because he had no record of the lower court proceedings in Civil Suit No.502 of 2004 where the subject matter was Motor Vehicle reg. No.UEB200 Toyota Hiace. The court then ruled that this case should proceed on the action brought and if during the trial the evidence of the court proceedings at Mengo is adduced the issue of *res-judicata* will be determined as one of the issues for trial.

In his written submissions, learned counsel for the 1<sup>st</sup> defendant submitted that the suit under consideration is res-judicata having been decided vide **Mengo Civil Suit 502 of 2004 Lukwago Bruno Vs Noah Kasaato.**

In response, learned counsel for the plaintiff in rejoinder submitted that the suit is not *res-judicata* because the plaintiff's case is premised on Section 13 of the Sale of Goods Act. That the issue of impounding of the vehicle was not exhaustively resolved in the cited case. Further that no issue was framed on impounding of the vehicle though the trial Magistrate just commented on it while writing judgment.

I have lived up to the promise to resolve this issue first since the judgment in **Mengo Civil Suit 502 of 2004** has been filed on record.

I agree with the submissions by learned counsel for the 1<sup>st</sup> defendant that this suit is statute barred under the provisions of Section 7 of the Civil Procedure Act Cap.71. This law provides:

***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.”***

In the instant case, there was a suit at Mengo Chief Magistrates' Court under Mengo-00-CV-0502-2004 **Lukwago Bruno Vs Noah Kasaato** wherein the plaintiff sued the defendant for recovery of 300,000/-. The suit was heard on merit in respect of the subject matter being a motor vehicle Reg. No. UEB200, Toyota Hiace (Kamunye) Engine number 211598003, Chassis No. LIT6IV-0107222 under a contract of sale between the plaintiff and the defendant dated 20<sup>th</sup> December 2002. The earlier case and the instant case both revolve around the issue of who breached the contract. The other issues are as a result of the breach.

According to the earlier judgment court found that the defendant, who is now the plaintiff in this case breached the contract. What is being litigated upon in the instant case are as a result of the effect of that decision. It is a continuation of the previous suit which was determined in favor of the 1<sup>st</sup> defendant in the instant case who was the plaintiff in the Magistrate's court. The defendant in a Magistrates' Court who is the plaintiff now did not appeal the decision but instead decided to file a fresh suit in the High Court.

I will find that this is a case that squarely falls under the provisions of Section 7 of the Civil Procedure Act. According to **Semakula Vs Magala & Others [1979] HCB 90**, the Court of Appeal held that once the plea of *res-judicata* is successfully raised, a suit must be dismissed. The doctrine of *res-judicata* is a fundamental doctrine to the effect that there must be an end to litigation. Every matter should be tried fairly once and having been so tried, all litigation about it should be concluded forever between the parties.

The plaintiff in this case was sued in Mengo for breach of contract which is in issue in this suit as issue No.2. The case was heard on merit and determined in favor of the 1<sup>st</sup> defendant in the instant case with costs. The defendant now plaintiff chose not to appeal against the decision but decided to file another disguised suit before this court. The transaction between the parties took place on 20<sup>th</sup> December 2002 and the vehicle was impounded by police on 3<sup>rd</sup> November 2003, almost a year when the vehicle was in possession of the plaintiff.

Therefore the plaintiff knew about the impounding and whereabouts of the vehicle when Civil Suit 502 of 2004 was filed in court. He, however chose not to exercise due diligence to bring forward the claim, because he knew why the vehicle was impounded.

According to the plaintiff herein he paid money to the defendant in fulfillment of the judgment in Civil Suit 502 of 2004.

Consequently I will uphold the submission by learned counsel for the 1<sup>st</sup> defendant that this suit is res-judicata. In the circumstances, I do not need to delve into issues 3 and issue 4.

The suit will accordingly be dismissed with costs.

**Stephen Musota**

**J U D G E**

**22.03.2016**