

in their custody as it was taken on 29th September, 2014. The Plaintiff holds the Defendant liable for breach of contract, loss and damage suffered.

4. The Defendant does not deny that it sold the suit vehicle to the Plaintiff through a bidding process but avers that before the motor vehicle could be released to the Plaintiff, it carried out investigations which revealed that the taxes for the said vehicle had been paid by Multi Auto Uganda Ltd which had originally imported the car on 2nd October 2014 and registered in its names through its agent Shafa Clearers and Forwarders and was issued with a motor vehicle registration book under number plate UAV 245Y. Further that Multi Auto Uganda Ltd through its agent had mis-declared the motor vehicle's chassis number and engine number as NKR58EO499665 and 4BE1795I97 respectively instead of NKR58E0499665 and 4BE1795197 respectively. Consequently, the Defendant impounded the said motor vehicle for mis-declaration and it was deposited at the Defendant's customs ware house in Nakawa. Further that by a letter dated 13th October 2014, the Defendant asked the Plaintiff to go and get a refund of the money he had paid but the same was not done.
5. The issues framed for resolution are;
 - i) Whether the Defendant was in breach of contract.
 - ii) Remedies available to the Plaintiff.

b) Analysis

6. **Section 10(1) of the Contract Act of 2010** defines a contract as “an agreement made with free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.” In **Nakana Trading Co. Ltd v. Coffee Marketing Board, Civil Suit No. 137 of 1991**, court defined breach of contract as “where one or both parties fail to fulfill the obligations imposed by the terms of contract.”
7. On 29th September 2014 the Plaintiff was registered by the Defendant as the owner of the suit vehicle and the Registration card to that effect was issued. On 1st October the Defendant issued an internal memo to its Malaba station introducing the Plaintiff as the

successful bidder for the suit vehicle and advising its agent at Malaba to facilitate its release to the Plaintiff. All these were actions by the Defendant to fulfill its part of the contract.

8. However when the Plaintiff went to Malaba to pick the car which was the final stage of the contract, the vehicle was not there and the Defendant's agent advised that it was not in their custody. Regardless what the Defendant's explanation was, this was breach of contract by the Defendant. The Defendant's explanation that the importer of the suit vehicle had eventually paid the dues that were owing and the car was released to him is understandable. However, it does not take away the duty on the Defendant to have conducted a due diligence check on the availability of the suit vehicle before it sold the same to the Plaintiff.
9. By so failing to exercise due diligence prior, the Defendant entered into a contract whose performance it could not execute completely. This is a clear case of breach of contract by the Defendant. Issue one is resolved in the affirmative.
10. For the said breach, the Plaintiff should be compensated. It is not disputed that the Plaintiff paid money for the suit car and the Defendant received the same. In fact the Defendant says it has written to the Plaintiff asking him to collect the said money. In these circumstances, clearly the Defendant and the Plaintiff had entered into a contract by which the Defendant offered to sell the suit car to the Plaintiff. The Plaintiff accepted the offer and agreed to pay for the same. He followed through by paying Ug. Shs: 4,060,000 on 14th December 2014 and Ug. Shs: 12,150,000 on 22nd December 2014. He also paid registration fees of Ug. Shs: 918,000/=. This should be refunded. Be that as it may I see no reason why the current market value today of the said car should be refunded. I reject this request. Since the Plaintiff is to be refunded I find the prayer for damages in lieu of specific performance unnecessary.
11. What is left and perhaps disputed is any additional expenses. The Plaintiff says that he made a trip to Malaba to collect the car and returned. This and all incidental expenses

thereto will be taken account of in determining the appropriate amount for general damages. However it should not be exaggerated.

12. Defendant counsel says that the Defendant wrote to the Plaintiff asking him to pick his refund and adduces annexure C to its written statement of defence to that effect. The Plaintiff says that he only saw this letter when the Defendant filed its defence in court. It is difficult to believe that this letter was received by the Plaintiff in 2014 when it is said to have been written when there is no acknowledgement of receipt of the same by the Plaintiff. I am therefore not satisfied that the same was delivered to the Plaintiff.

13. Based on the above, the Plaintiff's suit succeeds with the following orders:

- i. The Defendant shall refund a total of Ug. Shs: 17,128,000/= the money paid by the Plaintiff in respect of the suit car.
- ii. The Defendant shall pay the Plaintiff general damages of Ug. Shs. 6,000,000/= for the inconvenience and incidental expenses related to the breach of contract.
- iii. Interest on (i) and (ii) above at court rate of 6% per annum shall be paid from the date of judgment till payment in full.
- iv. The Defendant shall pay costs to the Plaintiff.

I so order

LYDIA MUGAMBE

JUDGE

22ND AUGUST, 2017