

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO. 192 OF 2009

LUBEGA KIKOME JOHN :::::::::::::::::::::::::::::: **PLAINTIFF**

VERSUS

HAMID GOMBE :::::::::::::::::::::::::::::: **DEFENDANT**

JUDGMENT

a) Introduction

1. The Plaintiff sued the Defendant for a refund of Ug. Shs: 46,000,000/= being the purchase price of motor vehicle Reg No. UAK 757G Isuzu Forward (herein after the suit vehicle), interest thereon at 26% per annum from date of demand until the date of satisfaction of the decree of this Court and costs of the suit.

2. The Plaintiff is represented by Mr. J. M Musisi of JM Musisi Advocates & Legal Consultants and the Defendant is represented by Mr. Ivan Kyateka of M/s. Tumusiime, Kabega & Co. Advocates.

3. Briefly the facts are that the Plaintiff purchased from the Defendant two motor vehicles, Isuzu Forward, Reg No. UAK 757G and Isuzu Forward Reg No. UAK 202 at a total of Ug. Shs. 78,000,000/= and the Plaintiff made a down payment of Ug. Shs. 43,000,000/= for one of the vehicles. On 27th October 2008 the parties entered into a formal agreement for payment of the balance by 30th November 2008. The Plaintiff did not pay as agreed prompting the Defendant to instruct a court bailiff to impound the suit vehicle according to the terms of the agreement. On 6th February 2009, the suit vehicle was impounded. In July 2009, the Plaintiff paid the balance of Ug, Shs. 35,000,000/= to the Defendant and the suit vehicle was given to him. He however rejected the vehicle because it was in a dilapidated

condition and he demanded a refund of the purchase price. The Plaintiff filed this suit to recover the balance paid for the suit vehicle on 15th October 2009 after the Defendant's failure to refund the same.

4. On 13th October 2010 the parties entered a consent judgment whose terms were that the Defendant repairs the suit vehicle and hands it over to the Plaintiff in good mechanical condition. The said consent judgment was later set aside by consent of the parties on 21st May 2015 and the suit proceeded on its merits because no such repairs were made.
5. The Plaintiff contends that after impounding the suit vehicle, the Defendant used it to ferry merchandise which led to its dilapidated state while the Defendant denies these allegations and claims that the vehicle was parked at Mengo Chief Magistrates court after being impounded until it was transferred to a park yard in Wandegeya where it could easily be disposed off and the Defendant's balance realized upon the agreement of both parties.
6. The Plaintiff testified as PW1 and called two other witnesses; Mr. Twinomugisha Allin a mechanic working at Total Maganjo who testified as PW2 and Mr. Masole Moses an employee of the Plaintiff. The Defendant testified on his own behalf and failed to bring other witnesses. In particular, he failed to bring the bailiff who is said to have impounded the car in spite of several adjournments to have him attend court.
7. The issues agreed at scheduling were;
 - i. Whether the Plaintiff is entitled to the money claimed as purchase price of the suit motor vehicle.
 - ii. What are the remedies available to the parties.

b) Analysis

8. It is not disputed that of the two vehicles the Plaintiff bought from the Defendant, one was paid for and is not in contention in this suit. It is also not in dispute that initially the Plaintiff did not pay for the second vehicle as agreed and it was impounded by the Defendant and/or his agents. Later after the payment of the full balance for the suit vehicle, interest thereon of

Ug. Shs: 3,000,000/= and lawyer's fees totaling Ug. Shs: 1,500,000/=, the Plaintiff was given the second vehicle by the Defendant.

9. By accepting the balance and these other monies as interest and lawyer's fees from the Plaintiff, the Defendant bound himself to give the second suit vehicle in a workable condition that it was in at the time it was impounded when the Plaintiff first failed to pay the full amount. The Plaintiff says that this did not happen. He was given a vehicle in a dilapidated condition and he demanded a refund of his purchase price which was Ug. Shs: 43,000,000/=.
10. After the Plaintiff sued the Defendant for the same, on 13th October 2010, the Plaintiff and Defendant entered a consent judgment in which the Defendant consented to repairing the suit vehicle and hand it to the Plaintiff in good mechanical condition. For years the Defendant did not fulfil his side of the consent judgment and on 21st May 2015, the consent judgment was set aside for the suit in court to be heard on its merits.
11. The Defendant contends that his bailiff told him that the car once impounded was at Mengo court and later taken to Wandegeya to find a buyer. However the three Plaintiff witnesses demonstrate that the car was not at Mengo during this time. PW3 physically saw the car ploughing the Masaka road on several occasions during this time and PW2 testified that he serviced this vehicle on several occasions at the petrol station where he worked in Matugga after distant trips during this time. PW2 and PW3 corroborate the testimony of PW1 that after paying the full amount, the car was in dilapidated condition.
12. The Defendant's testimony that the car was parked at court and in Wandegeya during this time is hearsay evidence that is inadmissible under section 59 of the Evidence Act. Moreover even if it were admissible it does not add up in the circumstances of this case.
13. I am mindful that the Plaintiff had used the suit vehicle for about 11 months before it was impounded. However I have no scintilla of evidence that when the vehicle was impounded from the Plaintiff, it was in a dilapidated state. In the circumstances of this case, the Plaintiff's side of the events is more logical, coherent and thus believable. Based on it, I find

that the car that the Defendant delivered to the Plaintiff after payment of the full purchase value was in a dilapidated state. The Plaintiff therefore did not get value for the money he paid and was right to demand for a refund of the purchase price.

14. The Defendant cannot claim that the Plaintiff breached their initial contract in which the balance was to be paid by 30th November 2008. I am satisfied that by accepting the full balance payment in July 2009, the Defendant repudiated the initial contract and entered into a new contract arrangement by which he was to avail the car in good mechanical condition. It does not make sense that the Plaintiff would set out to look for the balance due for the suit vehicle, pay up the same only to be given the car and he just rejects it. It makes sense though, that because the car he was given was dilapidated, he sought a refund of his purchase price for the same because he was not getting value for money.

15. Through his lawyers, bailiff and sometimes personally the Defendant was the one who owned the suit vehicles and was selling the same to the Plaintiff. It was the Defendant that the Plaintiff dealt with in the first place and his lawyer and bailiff only came in on his instruction in dealing with the Plaintiff. It is the Defendant that the Plaintiff paid the final balance and the Defendant committed to deliver the suit vehicle to the Plaintiff on such payment.

16. In **Muwonge v. Attorney General (1967) EA 17** it was held that “a master is liable for the acts of his servant committed within the course of his employment.” I therefore find that even if the dilapidated condition of the car was considered to be through the actions of the bailiff, they were actions sanctioned and intended for the benefit of the Defendant. The Defendant was the primary beneficiary of the money paid by the Plaintiff for the suit vehicle. Any actions of the bailiffs were actions by an agent his master, the Defendant. The buck therefore stops with the Defendant.

17. I am not convinced that the Plaintiff should get interest of 25% per annum as he requests. Instead in my discretion I will grant interest of 15% per annum. I am convinced that the Plaintiff used the suit vehicle as a hire vehicle to Africana clays as he testified. He therefore lost income when the same was not delivered for the same business once he paid the full

amount. However the Plaintiff did not attach any documentary evidence to demonstrate that he actually received the Ug. Shs: 5,000,000/= per month as his income from the suit vehicle. In my discretion I will award lost income of Ug. Shs: 2,500,000/= per month. I am satisfied that the Plaintiff suffered inconvenience and is entitled to general damages.

c) Conclusion

18. Based on the above, the Plaintiff is entitled to the purchase price of the suit vehicle. Issue one is resolved in the affirmative. Accordingly the suit is allowed with the following orders and remedies;

- i. The Defendant shall refund to the Plaintiff Ug. Shs: 46,000,000/= the purchase price of the suit vehicle.
- ii. The Plaintiff is awarded Ug. Shs: 2,500,000/= per month as lost income from July 2009 the date the Plaintiff paid the balance till payment in full.
- iii. The Plaintiff is awarded general damages of Ug. Shs: 20,000,000/= for the inconvenience occasioned through the failure to deliver the vehicle in good condition and the failure to refund his money.
- iv. Costs are awarded to the Plaintiff to be paid by the Defendant.
- v. Interest on (i) and (ii) above is awarded at 10% per annum from July 2009 the date the Plaintiff paid the balance till payment in full.

I so order.

LYDIA MUGAMBE

JUDGE

4th SEPTEMBER 2017.