

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

CIVIL APPEAL NO. 52 OF 2021

(Arising from Mengo CS NO. 962 OF 2018)

1. ALMADAN TRADING CO.LTD
2. RICHARD TWINOMUJUNI ===== APPELLANTS

VERSUS

KYAMANYWA EDWARD COOPER ===== RESPONDENT

BEFORE; HON. JUSTICE EMMANUEL BAGUMA

JUDGMENT

Background.

The Respondent/Plaintiff sued the appellants/Defendants in the lower court for breach of contract of sell of motor cycle. The trial magistrate decided in favour of the Respondent and the appellants being dissatisfied with the judgment and orders of the lower court appealed to this court on the following grounds.

Grounds of appeal.

1. *The learned trial Magistrate erred in law and fact when she held that the Respondent/plaintiff never consented to the transfer of the motorcycle.*
2. *The learned trial Magistrate erred in law and fact when she found that the 2nd appellant/defendant had to pay Ushs 400,000/= to the respondent/plaintiff.*
3. *The learned trial Magistrate erred in law and fact when she awarded a sum of Ushs 5,000,000/= as general damages which was excessive in the circumstances.*
4. *The learned trial Magistrate erred in law and fact when she awarded the plaintiff/respondent costs of the suit.*

Legal representation.

Mr. Kwemara Kafuuzi of Rwakafuuzi & Co. Advocates represented the Appellants while Mr. Warren Byamukama represented the Respondent.

Duty of first Appellant Court.

The duty of the first appellate court was stated in the case of **Kifamunte Henry Vs Uganda SC, (Cr) Appeal No. 10 of 2007**, where it was held that;

“...the first appellate court has a duty to review the evidence of the case, to reconsider the materials before the trial judge and makeup its own mind not disregarding the judgment appealed from but carefully weighing and considering it...”

This Court therefore has a duty to re-evaluate the evidence to avoid a miscarriage of justice as it mindfully arrives at its own conclusion. I will therefore bear these principles in mind as I resolve the grounds of appeal in this case.

The appellant framed two issues to cover the grounds of appeal and argued the same.

Submissions by Counsel for the Appellants on issue No. 1

Whether the Respondent consented to the registration of the motorcycle into the 2nd appellant’s name?

Counsel for the Appellants submitted that the dealings of the parties in this case were oral right from the discussion and resolution between the 2nd Appellant and the respondent to acquire a motor cycle and the former to ride it while paying the latter and later on to the actual purchase of the motorcycle without a purchase agreement save for the receipt.

Counsel submitted that the Respondent is an advocate of the High Court while the 2nd appellant is illiterate and a boda boda rider. That if the Respondent really needed a written contract with each of them he should have prepared one. The fact that he did not do that he did not find it necessary, this is because he trusted the appellants.

Counsel submitted that the 2nd appellant testified that upon buying the motorcycle the respondent was asked by the seller for a tax identification number (TIN) in order for the transfer to be effect into his name but didn't have it. That the Respondent per paragraph 9 conferred with the 2nd appellant and walked back to the 1st appellant's director and told him to use the TIN of the 2nd appellant and registered the motorcycle in his name.

Counsel submitted that the Respondent's version that the 2nd appellant disappeared was a falsehood calculated to bias court. That at all material time the 2nd appellant and Respondent were in communication as he was depositing his monthly instalment. That the motorcycle was stolen and the 2nd Appellant wounded which injuries were shown in the medical form. The said incident was even reported to the Respondent.

Issue No. 2

Whether the Respondent deserved the remedies awarded to him by the trial court.

Counsel submitted that the sum of 400,000/= was not born out of the trial Magistrate's reasoning because 300,000/= was supposed to be paid per month and it started on 20/11/2016 to 20/1/2017 and it could not have amounted to that.

Counsel submitted that the general damages of 5,000,000/= were not justified because there was no wrong suffered since the motor cycle was simply stolen and the contract frustrated.

In respect to the issue of costs, counsel submitted that Respondent did not succeed on the whole suit and hence he would have been at least granted half the costs of the suit.

Submissions by Counsel for the Respondent.

Whether the Respondent consented to the registration of the motorcycle into the 2nd appellant's name?

Counsel submitted that section 103 of the Evidence Act places the burden of proof as to any particular fact on that person who wishes the court to believe in its

existence. Counsel referred to the case of **Odongo Alfred Vs Fufa Super League Ltd & 7 others HCCS No. 244 of 2015** where court held that;

“the burden of proof totally lies on the person who is claiming the right to prove the existence on an oral agreement. Such oral agreement can be proved either with a recording of such agreement when it took place or by a witness before whom such agreement happened”.

Counsel submitted that it was an agreed fact that the Respondent purchased the motorcycle Bajaj Boxer Registration No. UEN 607L from the 1st Appellant and the receipt serial No. 2486 was issued to the Respondent by Khadijah the cashier of the 1st Appellant. The allegation that the Respondent consented to the transfer of the contract motor cycle into the names of the 2nd appellant was not proven in the lower court.

Counsel submitted that the trial Magistrate rightly described the testimony of DW1 Mwebaze Almadan who testified on behalf of the 1st Appellant as lies as far as the Respondent gave oral consent to transfer the motorcycle cycle into the name of the 2nd appellant is concerned since he was not present on the day of purchase of the motor cycle and Khadijah who was present was not called in court.

Counsel submitted that at the time of the purchase of the motorcycle, the log book was not ready and the same was transferred into the names of the 2nd Appellant after 2 months. If at all the Respondent wished the logbook to be registered in the 2nd appellant’s names, he should have clearly indicated the same in the receipt.

Issue No. 2

Whether the Respondent deserved the remedies awarded to him by the trial court.

Counsel submitted that the trial Magistrate was justified in awarding the damages she awarded since court established that the 1st Appellant unlawfully and fraudulently caused the transfer of the logbook into the name of the 2nd appellant. This caused mental anguish and suffering to the Respondent.

In respect to the submission on costs, counsel submitted that, the Respondent was the successful party when court found that he had been unlawfully and fraudulently denied ownership of the motorcycle when the 1st appellant transferred the same into

the name of the 2nd Respondent and hence he was entitled to costs of the suit in light of section 27 of the CPA.

Analysis of court.

Issue No. 1

Whether the Respondent consented to the registration of the motorcycle into the 2nd appellant's name?

According to S.101 (2) of the Evidence Act cap.6 provides that,

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts, which he or she asserts must prove that those facts exist

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person”.

Further S.102 of the Evidence Act goes on to provide that;

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side and S.103 provides that “the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that proof of that fact shall lie on any particular person”

In the case of **Odongo Alfred Vs Fufa Super League Ltd & 7 others HCCS No. 244 of 2015** it was held that;

“The burden of proof totally lies on the person who is claiming the right to prove the existence of an oral agreement. Such oral agreement can be proved either by a recording of such agreement when it took place or a witness before whom such agreement happened.

Oral agreements are risky and not safe as one doesn't know when anyone would back out from his own words. So it is difficult to prove those specific words when a dispute arises. Therefore, it is important that when making an oral agreement, one should be prepared for proving it in future. Both parties should make an

evidence of their oral agreement so that it could be helpful to prove their own words.

The plaintiff in this matter had that burden of proving the terms of the said oral agreement that he wanted court to enforce against the 2nd defendant if at all it was ever made

.....Where a person alleges the existence of an oral contract, that party has the burden of proving the assertion to the satisfaction of the court. This can be incredibly difficult where the only record is something along the lines of phone call and/or notes of the call.”.

From the evidence on record, it is not in dispute and both parties agreed that the said motorcycle was purchased from the 1st Appellant by the Respondent (Kyamanywa Edward Cooper). What is in issue in this appeal is whether the Respondent consented to the Registration of the motor cycle into the 2nd appellant’s names!!

From the evidence on record, receipt No. 4286 (PEX1) dated 20/11/2016 issued by the 1st Appellant the buyer was the Respondent (Kyamanywa Edward Cooper).

Both appellants agreed that there was no written consent to transfer the motor vehicle into the name of the 2nd Appellant.

The Respondent in his evidence in the lower court and at appeal stated that the transfer was conducted without his authorization and he vehemently denied having given such consent and indeed there was no proof of consent to transfer.

It is my finding and I agree with the trial court that the 2nd Appellant represented himself as the owner of the said motor vehicle whereas not hence causing the transfer of the said motor vehicle into his name without the consent of the actual owner the Respondent.

In the view of the above analysis, I have no reason to fault the trial court’s findings that the Respondent did not consent to the registration of the motorcycle into the 2nd Appellant’s name.

Issue No. 1 one is resolved in the negative.

Issue No. 2

Whether the Respondent entitled to the remedies granted.

According to the finding of the trial court the 400,000/= was the balance that has not been paid by the 2nd Appellant as lost income. I see no reason to vary the same.

Regarding award of general damages of 5,000,000/= to be paid jointly and severally by both appellants, I agree with counsel for the Appellant that it was harsh and not justified in the circumstances. Hence I will reduce it to 3,500,000/= (three millions five hundred thousand shillings) to be paid by both appellants.

Conclusion.

In the final result, the appeal partly succeeds with the following orders,

1. The transfer of the motor vehicle into the names of the 2nd Appellant was done without consent of the Respondent.
2. The award of general damages of 5,000,000/= is reduced to 3,500,000/= to be paid jointly and severally by both appellants.
3. The award of 400,000/= to be paid by the 2nd Appellant is upheld.
4. Basing on the nature and circumstances of this appeal, each party shall bare their costs in the lower court and at appeal.

Dated, signed, sealed and delivered by email on this **15th** day of **August 2023**

Emmanuel Baguma

Judge