THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI CJ, ODER JSC, TSEKOOKO JSC, KAROKORA JSC AND MULENGA JSC)

CIVIL APPEAL NO. 5 OF 2002

BETWEEN

JANE BWIRIZA :: APPELLANT

AND

JOHN NATHAN OSAPIL :: RESPONDENT

(Appeal from the judgement of the Court of Appeal at Kampala (Okello, Berko and Twinomujuni JJCA) dated 3rd October 2000 in Civil Appeal No. 51 of 1999)

JUDGMENT OF ODOKI CJ

This is a second appeal from the judgment of the Court of Appeal (Okello, Berko and Twinomujuni JJCA) dated 3rd October 2000, given against the Appellant.

The facts as found by the lower courts were that on 20th December 1995 the Respondent sold his motor vehicle to one Emmanuel Kaddu who was the first Defendant in the High Court, for Shs. 12,500,000/=. A written sale agreement, Exh. P.1, was executed between the Respondent and Kaddu. Kaddu made part-payment to the Respondent of Shs7,200,000/= leaving a balance of Shs.5,300,000/=, which he promised to pay on or before 20th February 1996.

The Respondent handed the vehicle to Kaddu together with a photocopy of the Logbook. The Respondent retained the original logbook, the road licence and the insurance certificate.

On the same day, Kaddu sold the vehicle to the Appellant who had seen the vehicle parked at Kaddu's parking yard in the Container Village, in Kampala, for Shs. 12,800,000/=. Kaddu handed over the vehicle to the Appellant on the same day.

When Kaddu failed to pay the balance of the purchase price to the Respondent, the latter caused the vehicle to be impounded by the Police in September 1996 and kept at the Central Police Station (CPS). The vehicle was released to the Appellant when she established that she owned it. Consequently, the Respondent brought an action against Kaddu and the Appellant claiming against Kaddu specific performance of the contract of sale, payment of the balance of the purchase price, or the return of the vehicle, damages for breach of contract and costs of the suit. The Respondent claimed against the Appellant special and general damages for conversion, detinue, loss of profits, and loss of earnings.

In a joint written statement of defence by Kaddu and the Appellant, Kaddu contended that the property in the vehicle had passed to him on the execution of the sale agreement. The Appellant contended that she was the owner of the vehicle by purchase from Kaddu. In her counter-claim the Appellant claimed against the Respondent loss of earnings at the rate of Shs.60,000/= per day arising from the failure by the Respondent to release to her the logbook of the vehicle, which prevented her from renewing the road licence to enable her put the vehicle to commercial use.

The learned trial judge gave judgment against Kaddu in favour of the Respondent for the sum of Shs.5,300,000/= being the balance of the purchase price, with interest at the rate of 25% per annum, and Shs. 1,000,000/= general damages with interest at the court's rate, and costs of the suit. The learned trial judge dismissed the suit against the Appellant on the ground that she acquired a good

title from Kaddu. He dismissed the Appellant's counter-claim against the Respondent but did not award costs to the Respondent.
Kaddu did not appeal to the Court of Appeal, but the Respondent appealed and the Appellant cross-appealed. The Court of Appeal dismissed the appeal by the Respondent except that it allowed the Respondent costs on the counter-claim and also on the cross-appeal.

The Appellant now appeals to this Court from the decision of the Court of Appeal on the following three grounds:

1. The learned Justices of Appeal misdirected themselves on the essential ingredients of the tort of intentionally causing loss by unlawful means when they held that the Appellant had to establish that the Respondent breached his common law duty owed to her.

2. The learned Justices of the Court of Appeal misapplied the cases of ***Danoghue v. Stephenson*** (1932) AC 562 and ***Batty and Another v/s Metropolitan Property Realisation and Another*** (1978) 2 All E.R. 445 to the issue under consideration and as a result they arrived at a wrong conclusion.

3. The learned Justices of the Court of Appeal erred by failing to assess damages.

The Respondent has cross-appealed on four grounds, namely,

1. The learned Justices of the Court of Appeal erred on the facts and in law in holding that at the time of execution of the agreement for the sale of the suit motor vehicle by the Respondent to Emmanuel Kaddu the property in the said motor vehicle thereupon legally passed to Emmanuel Kaddu and that the said Kaddu could legally sell and pass title in the said motor vehicle to the Appellant.

2. The learned Justices of Appeal erred in holding that upon the execution of the said sale agreement between the Respondent and Emmanuel Kaddu, the Respondent consequently legally had no proprietary interest in the said motor vehicle and had no right to impound the said motor vehicle on the failure of Emmanuel Kaddu to settle the outstanding balance of the purchase price.

3. The learned Justices of Appeal erred in disregarding the facts of incomplete payment of the purchase price by Emmanuel Kaddu, of extension of the date of settlement of the purchase price, of non-transfer of title and retainer of the log book, road licence and insurance policy by the Respondent in respect of the motor vehicle as being peculiar circumstances of the case representing intention of the parties to the said sale agreement to the effect that the property in the said vehicle was not to pass to Emmanuel Kaddu on the execution of the sale agreement until after the unpaid balance of the purchase price had been settled by Emmanuel Kaddu in full.

4. The said errors of the Justices of Appeal caused a miscarriage of justice to the Respondent.

Mr. Tibesigwa, learned counsel for the Appellant argued together grounds 1 and 2. His main submission was that the learned Justices of Appeal misdirected themselves on the ingredients of the tort of causing loss by unlawful means. He argued that the tort of intentionally causing loss by unlawful means has been held to be a tort without a name. It is called an innominate tort. Learned Counsel referred us to ***the Law of Torts*** by Harry Street, 6th edn p.352 where the

Dictum of Bowen LJ in ***Mogul ss Co v. McGregor Gow & Co.*** (1889) 23 QBD 598 at page 613 was quoted:

> ***"Now, intentionally to do that which is calculated in the ordinary course of events to damage and which does in fact, damage another in that other person's property or trade, is actionable if done without just cause or excuse"***

Commenting on this dictum, Street observes,

> ***"This dictum of Bowen LJ (which as a later judgment of his shows) was intended to put the proof of absence of just cause on the plaintiff - Skinner v. Shew (1893) 1 Ch.413 at p.422 CA,) recognises that even though no contract has been interferred with and there has been no conspiracy, trade interests are protected in tort against illegal and intentional interference.***
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> ***The leading case is Allen v. Floods (1898) A.C. 1 (H.L). The House of Lords there established that a representative of a group of employees who maliciously induced an employer not to engage employees from a rival union did not commit a tort against persons thereby deprived of a job. This case settles that the act of an individual, however harmful and malicious it may be, is not actionable if it is otherwise lawful. This inquiry is directed then to the circumstances in which acts causing such damage can be said to amount to wrongful conduct, although they are neither actionable conspiracies (as already defined) nor interferences with existing contracts"***

Mr. Tibesigwa pointed out that the trial judge dismissed the Appellant's claim on the ground that there was no privity of contract between the parties. But it was submitted that if the Appellant did not succeed in contract she was entitled to succeed in tort. The Court of Appeal held that the Appellant failed in tort because she had failed to prove a duty of care owed to her by the Respondent. Counsel contended that a breach of duty is not an ingredient of the tort of intentionally causing loss by unlawful means. It was his submission that the four essential ingredients were:

(i) The Defendant must perform a positive act.

(ii) The positive act must cause loss.

(iii) The act must be intentional.

(iv) The act must be unlawful.

Learned Counsel for the Appellant relied on the cases of ***Beaudesert Shire Council v. Smith and Others*** (1966) 120 CLR. 145, at pages 155 and 156

Dunlop v. Woolahra Municipal Council (1981) 1 All ER. 1201 (PC) at page 1208, where the ***'Beaudesert claim'*** was considered.

Mr. Tibesigwa submitted that in the ***Dunlop Case,*** (supra) the Court recognised the Beaudesert claim and accepted the tort of intentionally causing loss by unlawful means, but the claim failed because Dunlop failed to prove unlawfulness. In the instant case, Counsel argued, all the ingredients of the tort were proved by evidence. According to Counsel, the first ingredient of positive act was established by the impounding of the vehicle and refusal to hand over the logbook. Mr. Tibesigwa invited the Court to make a finding that the Respondent refused to hand over the logbook even though the lower courts failed to make this finding.

As regards the second ingredient of causing loss, Mr. Tibesigwa contended that there was evidence, upon which the trial judge found, that the Appellant was losing Shs.60,000/= per day from 3 November 1996 when she approached the Appellant to renew the licence, and she stopped using the vehicle when he refused to release the logbook. It was his submission that the Respondent thereby intended to cause loss to her since he knew that the vehicle was being used for commercial purposes. Counsel argued that a person is presumed to intend the direct consequences of his act. He relied on the case of ***Croften Hand Woven Harris Tweed Co v. Veich*** (1942) 1 All ER 142 at p. 153 where Viscount Magnham said,

> ***"On this point if it arises, there is little authority to guide us, but I will add that, when the question of real purpose is being considered, it is impossible to leave out of consideration the principle that men are in general to be taken as intending the direct consequences of their acts: See the summing up of Fizgibbon, LJ in Quinn v. Leather (1901) A.C. 495 at p.499."***

Counsel for the Appellant submitted further that the trial judge found that the refusal to hand over the logbook was unlawful, and that the finding was not challenged on appeal.

Mr. Emesu, learned Counsel for the Respondent, submitted that the appeal should be dismissed for the reasons given by the Court of Appeal. He argued that the evidence on record showed that the logbook was left voluntarily by Kaddu to be held by the Respondent as a security for payment of the balance of the purchase price. He contended that according to the evidence of the Respondent, the sale agreement allowed Kaddu to take delivery of the vehicle together with the photocopy of the logbook, but the Respondent held on the road licence, and insurance and the original logbook. He invited us to hold that when the Respondent sold the vehicle to Kaddu, it was not to be resold nor put on the road.

Learned Counsel for the Respondent further argued that the Appellant knew that she was buying a vehicle she could not use without Kaddu regularising the sale, since she did not have a logbook. Counsel submitted that a logbook is a document of title and relied on the case of ***Fred Kamanda v Uganda Commercial Bank*** Civil App. No. 17 of 1995 (SC) (unreported) where I said,

> ***"A registration card is therefore evidence of ownership as the person in whose name the vehicle is registered is presumed to be the owner of the vehicle unless proved otherwise. A registration card is prima facie evidence of title, and I would hold that it is a document of title."***

Mr. Emesu submitted that the claim of loss of income was not credible because the Respondent seized the vehicle so that his balance could be paid. He argued that the Respondent was exercising his right to impound the vehicle since he retained the logbook as a security, in an agreement he made with Kaddu. Therefore, Counsel contended, the Appellant should have sought compensation from Kaddu because the Respondent did not contemplate that Kaddu would sell the vehicle to a third party. Counsel argued that the Respondent had a contractual right to retain the logbook contrary to law, with the consent of Kaddu.

Learned Counsel for the Respondent contended that the principle of proximity should apply to the innominate tort and therefore the Appellant suffered loss directly arising from the actions of Kaddu and not from those of the Respondent. He submitted further that the Court of Appeal failed to take into account the fact

that the parties did not intend the property to pass before full payment of purchase price. He argued that loss of income was not foreseeable because the Respondent became aware of the Appellant on 24 September 1996 when they met at the Central Police Station. He submitted further that the Appellant did not mitigate the loss by paying the balance of the purchase price direct to the Respondent.

In dismissing the cross appeal by the appellant, the Court of Appeal, in a leading judgement by Berko JA, with whom other Justices of Appeal agreed, said,

> ***"Following the English Court of Appeal decision in Esso Petroleum Co Ltd. Vs. Mardon (1976) 2AII ER 5. it is now beyond dispute that the mere fact that a plaintiff has obtained judgement for breach of contract does not preclude him to have judgement entered in his favour also in tort, assuming that the Plaintiff had established a breach by the defendant of his common law duty of care owed to the plaintiff. Therefore in order for the second respondent to have judgement entered against the appellant in tort for intentionally causing economic loss to her by unlawful means, the second respondent had to establish that the appellant breached a common law duty of care owed to her.***
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> ***On the facts, I must confess that the second respondent has not been able to establish that the appellant owed her any duty of care, which had been breached. As the appellant did not sell the vehicle to her, he could not contemplate that the retention of the logbook would cause the second respondent loss. I have not been able to find "any sufficient relationship of proximity of neighbourhood such that in the reasonable contemplation of the appellant, the carelessness on his part, may likely cause damage to the second respondent" See Donoughue V. Stevenson (1932)A.C. 562 Batty and Another V. Metropolitan Property Realisation Ltd & Others (1978) 2 All ER 445. The cross-appeal therefore fails."***

The two recent decisions which considered the principles relating to the ***"beaudesert claim"*** namely ***Beaudesert Shire Council V Smith*** (supra) and ***Dunlop V. Woollahra Municipal Council*** (Supra) were not cited nor considered by the Court of Appeal. These decisions have attempted to explain the principles governing the so called innominate tort of intentionally causing loss by unlawful means. I think it is necessary to refer to them in some detail.

In ***Beaudesert Shire Council V. Smith*** (Supra), the holder of a license under the Water Act of 1926 to install a pumping plant of his property fronting a river for irrigation purposes, suffered loss and damage as a result of the action of a local authority in taking gravel for road construction purposes out of the bed of the river, so destroying the water-hole from which the licensee pumped water. The local authority was the constructing authority in certain road construction work for the Commissioner of Main Roads. The local authority did not hold a permit to take gravel under the appropriate regulations, which forbade the taking of the gravel except with a permit and provided for the issue of permits and it did not have a certificate of authority issued by the Commissioner of Main Roads, who did hold a permit. The Licensee sued the local authority for damages. The Supreme Court of Queensland awarded the Respondents damages of £5,000. The appellant appealed to the High Court of Australia.

On appeal, it was held that the local authority was not, in the circumstances, liable to the licensee in negligence or for public or private nuisance, but it was liable in an action on the case for it intentionally did a positive act forbidden by law which inevitably caused damage to the licensee by preventing the continued exercise of his rights as a licensee in the manner in which they had been enjoyed for some thirteen years. The High Court therefore dismissed the appeal save for the reduction of damages to £1,000.

In dismissing the appeal, the High Court stated at p. 152.

> ***"It appears to us therefore that, if what the appellant did was actionable at the suit of Smith and his personal representatives for damage suffered thereby, liability must depend upon the broad principle that the Council intentionally did some positive act forbidden by law which inevitably caused damage to Smith by preventing the continuing exercise of his rights as a licensee in the manner in which they had been enjoyed for some thirteen years. Such a cause of action must, we think, be found either in or by analogy with, an action on the case for trespass.***
>
> ***In our consideration of whether the respondents' action can be supported as an action on the case independently of trespass, nuisance or negligence, we are indebted to A K Keralfy, the Author of an historical study of the Action on the Case. We do not propose to***

> ***take up the author's research; rather we will refer to a number of authorities he has collected relating to actions of trespass on the case and add one or two further references. These authorities are in the main, cases where breach of duty owed to persons directly affected by wrongful acts caused damage to other persons".***

The court concluded by re-stating what has come to be referred to as the ***"Beaudesert claim"*** at p. 156.

> ***"Bearing this in mind, it appears that the authorities cited do justify a proposition that, independently of trespass, negligence or nuisance, but by an action for damages upon the case, a person who suffers harm or loss as the inevitable consequence of unlawful intentional and positive acts of another is entitled to recover damages from the other."***

In ***Dunlop V Woollahra Municipal Council*** (Supra), the Privy Council had occasion to consider the principle enunciated in the case of ***Beaudesert Shire Council V Smith and others.*** (Supra). In the ***Dunlop case*** (Supra) the Appellant purchased in December 1972 a property in a residential area using a Bank loan to finance the purchase. The Appellant in conjunction with the owners of two adjoining properties, hoped to obtain planning consent for the erection of one or more 8-storey buildings of residential flats on the site and then sell the site to a development company at a price greatly enhanced by the planning consent. The local planning authority ("the Council") were opposed to the proposed development and on the advice of their solicitors passed two resolutions; one restricting the building of residential flats on the site to three storeys and the other imposing a building line restriction requiring any new building on the site to be set back a certain distance from the boundary. Both resolutions were on legal advice, passed in the form of building restrictions imposed by the Council acting in their capacity as the local authority rather than as planning restrictions imposed by a planning authority.

The Appellant obtained declarations that both resolutions were invalid and void. In particular, the resolution restricting the number of storeys was held to be ultra vires, while the resolution imposing the building line restriction was held to be invalid, because the Appellant had not been given the opportunity, to which so it was held, he was entitled, of presenting objections before the resolutions were

passed. The Judge specifically found that the Council had not acted ***mala fide*** in passing the resolutions. By reason of a slump in the property market in the period between the passing of the resolutions and the Appellant obtaining the declarations the Appellant was unable to sell his property at the price originally envisaged and was forced to incur over draft charges, rates and taxes for a further two years before he could find a buyer at an acceptable price.

The Appellant brought an action, in the Supreme Court of New South Wales in Australia against the Council for:

(i) trespass on the case in that he had suffered loss as the inevitable consequence of the unlawful, intentional and positive acts of the Council;

(ii) negligence in that the Council had failed to take reasonable care by seeking proper legal advice before passing the resolution restricting the number of storeys and had failed to take reasonable care to give him a proper hearing before passing the building line resolution, and;

(iii) abuse of public office by the Council in passing the building resolutions.

The trial judge dismissed the Appellant's claim and he appealed to the Privy Council.

The Privy Council dismissed the appeal. The Court held among others, that the principle of law that a person was entitled to recover damages in an action on the case for loss or harm, suffered as the inevitable consequence of the unlawful, intentional and positive act of another only applied if the act was illegal or forbidden by law and did not apply to an act, which was merely null and void and incapable of affecting legal rights. The Council's resolutions being merely invalid and not unlawful, the Appellant's claim for damages on the case failed.

The Privy Council acknowledged that the principles upon which the "Beaudesert claims" are based are not free from difficulty. At page 1208, Lord Diplock said,

> ***"Their Lordships understand that they are not alone in finding difficulty in a ascertaining what limits are imposed on the scope of this innominate tort by the requirement that in order to constitute it the acts of the tortfeasor must be positive, having as their inevitable consequence harm or loss to the plaintiff and what is crucial in the instant case must be 'unlawful'. The eight cases referred to as a solid body of authority for the proposition appear to be miscellaneous in character that they throw no further light on the matter.***
>
> ***Nor, although Beaudesert was decided some 14 years ago, has it been clarified by judicial exegesis in Australian courts or followed in any other common law jurisdiction. It has never been applied in Australia in any subsequent case".***

From these authorities, it is apparent that the tort of intentionally causing loss by unlawful means is claiming recognition in some common law jurisdictions. But its scope and limits appear to be not fully defined. It appears that the Beaudesert claim is not a common claim in tort. But from the authorities cited, it is clear that the elements of the tort are those as outlined by Mr. Tibesigwa in his submission before us.

The issue is whether the Court of Appeal erred in coming to the conclusion that the Appellant failed to establish the tort. The Court of Appeal held that the Appellant's claim failed because she had failed to establish a breach of common law duty owed to her and, secondly her failure to prove that the loss incurred by her was in contemplation of the Respondent when he retained the logbook.

Mr. Tibesigwa submitted that proof of breach of common law duty was not an essential element of the tort of intentionally causing loss by unlawful means. The law on this point does not seem clear but one of the essential elements of most torts is a breach of duty owed to a third person - the neighbour principle enunciated in the case of ***Donoghue v. Stevenson*** (supra). This element is related to the foreseeability of damages or loss, which is an element of the innominate tort. The authorities on the Beaudesert claim refer to loss as being ***"direct or inevitable consequence".*** These words ***"direct"*** and ***"inevitable"*** import the elements of causation and foresight and the need for the act causing damage to be a direct or proximate cause of the damage. See ***Batty and Another v. Metropolitan Property Realisation Ltd. and Others*** (supra).

The Court of Appeal held that the loss incurred by the Appellant, was not a direct consequence of the failure of the Respondent to hand over the logbook to Kaddu or the Appellant, and therefore, not foreseeable because the Respondent did not contemplate the Appellant using the vehicle for commercial purposes. As regards the Beaudesert claim, the second element of causing loss was, therefore not proved. In my judgment the Court of Appeal came to the right conclusion and accordingly, the two grounds of appeal should fail.

The third ground of appeal is that the learned Justice of Appeal erred in failing to assess damages on the counter-claim. Mr. Tibesigwa submitted that the appellate court should have assessed the damages on the counter-claim because the issue of quantum of damages was canvassed. He pointed out that the quantification of damages was Shs.47,587,0007= being loss of income claimed from the date the license expired till the date of judgment. He prayed that the amount be awarded to the appellant.

The trial judge dismissed the counter-claim without assessing the damages he would have awarded had the claim succeeded. I agree that the learned trial judge erred in this respect. However, it does not seem to me that this error not to assess damages formed a ground of appeal in the Court of Appeal. What was challenged in the Court of Appeal was the trial judges' decision dismissing the counter-claim. The Court of Appeal upheld the trial judges' decision, thus dismissing the cross-appeal. I am unable to say that having come to this conclusion, the Court of Appeal erred in not assessing damages.

In view of my decision on the first two grounds of appeal, the Appellants' claim for damages should fail. Therefore I find no merit in the third ground of appeal which should also fail. I would therefore dismiss this appeal with costs here and in the court below.

I shall now deal with the cross-appeal. The substance of the complaints in grounds 1, 2, 3 and 4 of the cross-appeal is that the Justices of Appeal erred in law and in fact in holding that on the execution of the sale agreement the property

in the vehicle legally passed to Kaddu who thereby had a right to sell the vehicle to the Appellant, and therefore, the Respondent was not entitled to impound the vehicle for failure by Kaddu to pay the outstanding balance, on the purchase price of the vehicle.

Mr. Emesu, learned counsel for the Respondent, submitted that the Court of Appeal should have considered the conduct of the Respondent and Kaddu to determine the terms of sale. According to counsel, the conduct of the parties showed that the Respondent was retaining the logbook as a lien. He argued that the Court of Appeal reached the finding that the property passed on the execution of agreement without considering the intention or conduct of the parties which showed that the property would not pass until the full purchase price was paid. Counsel contended that the Respondent was justified in retaining the log book on account of the outstanding balance of the purchase price. Mr. Emesu finally submitted that because the Respondent held the documents of title it was not contemplated that the vehicle would be sold before completion of payment of the purchase price and, therefore, the loss to the Appellant was not foreseable.

While dealing with the issue whether the property in the goods passed from the Respondent to Kaddu, the Court of Appeal in the leading judgment by Berko, JA, referred to sections 19 and 20 of the Sale of Goods Act, which provide as follows:

> ***"19(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.***
>
> ***(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstance of the case.***
>
> ***20. Unless a different intention appears, the following are the rules for ascertaining the intention of the parties at the time at which the property in the goods is to pass to the buyer-***
>
> ***(1) Where there is unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time for payment or the time for delivery or both be postponed."***

The learned Justice of Appeal then concluded,

> ***"This was a contract for the sale of a specific motor vehicle. It was not subject to condition as to when the property in the vehicle was to pass. The seller gave possession of the vehicle to the buyer from the time of the execution of the contract of sale. The property in the vehicle therefore passed from the appellant to Kaddu when Exh. P. 1 was executed. The fact that the whole purchase price had not been paid is immaterial. Consequently the prima facie title of the appellant in the vehicle by being its registered owner is rebutted by the contract of sale between himself and Kaddu. Accordingly Kaddu could legally sell and pass the title in the vehicle to the second Respondent. The learned judge was therefore right in so finding."***

The Court of Appeal came to the above conclusion without considering the intention of the parties as evidenced by their conduct, which elements are emphasised in both sections 19 and 20 of the Sale of Goods Act. The general rules as to the passing of property in the goods can be modified by the intention or conduct of the parties to the sale.

In the instance case, it was submitted for the Respondent that the conduct which showed the intention of the parties were the Respondents retention of the logbook, insurance certificate and road licence. It was contended that these documents were retained as a lien until payment of the full purchase price. The Court of Appeal held that the Respondent lost his lien the moment the buyer obtained possession of the goods, under section 43 of the Sale of Goods Act.

It seems to me that the Respondent retained the logbook, insurance certificate and road licence as security for the payment of the balance of the purchase price. The critical issue is whether the Respondent retained ownership of the vehicle or whether title in the property passed to Kaddu. The fact that the buyer, Kaddu, allowed the Respondent to retain the logbook, the insurance certificate and the road licence, shows that the intention of the parties was that the property in the vehicle would not pass at the signing of the sale agreement. If the property in the goods did not pass to Kaddu, the Respondent could not have anticipated that Kaddu would sell the vehicle to the Appellant when Kaddu never had any title to

pass. Therefore the Respondent could not have anticipated causing loss to the Appellant by retaining the logbook. The loss suffered by the Appellant was not direct but remote to the action of the Respondent, in retaining the logbook. Accordingly, the cross-appeal should succeed.

In the result, I would dismiss the appeal with costs here and in the court below. I would allow the cross-appeal with costs here and in the court below -

As other members of the Court agree with the order I have proposed, there will be an order in the terms I have proposed.

JUDGMENT OF ODER - JSC.

I have had the benefit of reading in draft the judgment of the Hon. the Chief Justice, B. J. Odoki, CJ.

I agree with him that the appeal should be dismissed, and that the cross-appeal should succeed. I have nothing useful to add. I also agree with the order for costs proposed by him.

JUDGMENT OF TSEKOOKO, JSC:

I have had the benefit of reading in draft the judgment prepared by My Lord the learned Chief Justice, and agree with his reasoning, the conclusions and the orders he has proposed.

JUDGMENT OF KAROKORA. JSC

I have had the advantage of reading in draft the judgment prepared by my Lord the Chief Justice and agree with his reasoning, conclusions and orders on the appeal and the cross-appeal.

I have nothing useful to add.

JUDGMENT OF MULENGA J.S.C.

I had advantage of reading, in draft, the judgment prepared by the Hon. Chief Justice Odoki. I agree that the appeal should be dismissed, and that the cross-appeal ought to succeed. I concur with the order as to costs proposed by him. I have nothing to add.

Dated at Mengo the 18th day of June 2002