

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CV – CS NO. 001 OF 2014

1. ASINGWIRE ALEX WILLY }PLAINTIFFS

5 **2. BIRYABAREMA DEO }**

VERSUS

RWAKOJO GRACE.....DEFENDANT

BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE

10 **Judgment**

The Plaintiffs' case against the Defendant was in respect of a motor vehicle, Registration No. UAJ 579K, Toyota Hiace, jointly purchased by the Plaintiffs and the Defendant upon part payment of the purchase price to **Chatcha Investments (U) Ltd**. The Plaintiffs and the Defendant paid Shs. 11, 300,000/= to Chatha Investments (U) Ltd and the 1st Plaintiff on the
15 said sum contributed UGX 2,000,000/=, the 2nd Plaintiff UGX 4,000,000/= and Defendant contributed UGX 5,300,000/=, leaving the balance of UGX 10,500,000/= unpaid. In the course of operations, problems arose and the Plaintiffs sued the Defendant demanding for accountability for the period of 22/8/2007 to 26/2/2008, special damages, general damages and costs.

20 The Defendant denied liability and filed a counter claim seeking exemplary and punitive damages in respect of his unlawful arrest and detention at Fort Portal Police Station.

The agreed facts were that;

The parties executed the agreement of buying a vehicle Kigege (taxi) dated 27th July 2007. The vehicle was later registered as UAJ 579K. The sale of vehicle agreement between Chatha
25 Investments (U) Ltd and the Defendant was dated 27th July 2007. The vehicle was delivered to the Defendant on 8th August 2007. The Defendant presented guarantee cheques totalling to UGX 10,500,000/= to Chatha Investments (U) Ltd on 8th August 2007. The Plaintiffs

complained to the Police who arrested the Defendant at Gardens Restaurant on 26th February 2008 and transferred him to Fort Portal Police Station where he was detained. Subsequent to the Police complaint, the parties concluded the “*Agreement of our Vehicle Kigege (taxi) Reg. Number UAJ 579K minibus type*” on 28th February 2008 the Plaintiffs also took over
5 possession of the vehicle. Chatha Investment (U) Ltd commenced legal proceedings, **Chatha Investments (U) Ltd versus Rwakoko Grace**, CS No. 660 of 2008. The proceedings terminated with repossession and auctioning of the vehicle at UGX 12,000,000/=.

Issues:

1. Whether there existed a partnership between the parties?
- 10 2. Whether the parties are liable to account for the periods they respectively operated the suit vehicle?
3. Whether the Counter-Plaintiff was unlawfully arrested and detained and if so, Whether the Counter-Defendants are liable?
4. Whether the Counter-Defendants unlawfully took possession of the suit vehicle.
- 15 5. What remedies are available to the parties?

M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates represented the Plaintiffs and M/s Muyanja & Associates, Advocates & Legal Consultants represented the Defendant. By consent both parties filed written submissions.

Issue 1: Whether there existed a partnership between the parties?

20 Counsel for the Plaintiffs referred to **Section 2(1)** of the Partnership Act defines a partnership as the relation which subsists between persons carrying on business in common with a view point of profit and can be formed informally or by conduct of the parties as per the case of **Dr. Okello N. David versus Komakech Stephen, H.C.C.S No. 30 of 2004.**

25 He also submitted that there is no doubt that the Plaintiffs and the Defendant bought the suit motor vehicle with the intention of doing business to earn profit. The Defendant picked the suit vehicle and started operating it on the road on the 22/8/2008. Thus, there is sufficient evidence that a partnership existed between the parties.

Counsel for the Defendant on the other hand submitted that the Business Names Registration Act and the Partnership Act stipulate that a partnership exists with a view to carry on business
30 for profit; the partners are collectively described by law as a firm; and the partners must trade

under a business name which shall be called the firm name. That a partnership may be governed by a partnership contract, a written agreement, agreed positions between partners either from their express or implied conduct or overriding prohibitions entrenched within the Act unless if expressly negated by the written partnership agreement. That in the instant case
5 the Plaintiffs did not prove compliance with the Law under the Business Names Registration Act.

Further, that it was the Defendant who was the purchaser and it was only logical for the vendor to pursue him and the Plaintiffs made no effort to salvage the vehicle. That the Plaintiffs never made a formal partnership and failed to contribute money for furnishing the
10 suit vehicle with the requisite fittings. That the Defendant was left to devise on how to do the fitting and he also notified the Plaintiffs of the commencement date and the repayment of the credit money borrowed to refund the fittings, which evidence was not challenged. That the conduct of the Plaintiffs grabbing the car from the Defendant broke down the prospects of a partnership between the parties.

15 Counsel for the Defendant added that the law estops the Plaintiffs from asserting that a partnership existed as long as they cannot prove any exemption under the Business Names Registration Act.

This Court has carefully considered the submissions on both sides under the 1st issue. I have also considered the evidence and testimonies of the witnesses on both sides and studied all
20 the pleadings on record. As already noted, the agreement of buying a vehicle Kigege (taxi) minibus was a precondition that a formal partnership would be concluded after paying for the vehicle. The parties did not plead any exemption which made them not to fulfil the contract pre-condition or not to comply with the mandatory provisions of **Section 2(2)** of the Business Names Registration Act. Under the Business names Registration Act, Cap. 109 Laws of
25 Uganda, Business Names are to be registered whether **partnership** or otherwise. Registration is therefore compulsory.

In this case, the Plaintiffs, from the evidence on record, did not comply with **Sections 4, 5**
and **6** of the Business Names Act. That meant that there was no partnership in place. Even if
Section 2 (1) of the Partnership Act defines a partnership as the relation which subsists
30 between persons carrying on business in common with a view point of profit, as submitted by Counsel for the Plaintiffs, such partnership, presumed or real has to be registered under the Business Names Registration Act. That was not done in this case.

Secondly, the 2nd Plaintiff, Biryabarema Deo, signed the standard form Chatha Investments (U) Ltd sale of vehicle agreement recording the Defendant as the purchaser and 2nd Plaintiff as a **witness** and not as a **partner**. That was very fundamental. The consequences of failure to register a partnership was when execution proceedings in **Nakawa Chief Magistrate's**
5 **Court Civil Suit No. 660 of 2008 (Chatha Investments (U) Ltd versus Rwakojo Grace).**

The vendor of the mini bus in question did not sue the other “alleged partners, Asingwire Alex Willy and Biryabarema Deo, the Plaintiffs now. When the vehicle was attached, the Plaintiffs did not engage in, any negotiations with the vendor as associates of Rwakojo Grace. I therefore agree with the submissions of Counsel for the Defendant that the Plaintiffs did not
10 prove any exceptions which stopped them from completing the formal partnership, and they did not even contribute money for furnishing the vehicle when it required fittings. That was done by the Defendant alone. That is reflected under paragraph 15 and 16 of Grace Rwakojo's witness statement. Under paragraph 17, Grace Rwakojo added that they consequently developed misunderstandings, particularly with Deo Biryabarema.

15 And when the Plaintiffs grabbed the vehicle from the Defendant, they did not come back to the Defendant with a management proposition to indicate that the Defendant's stake was still accounted for, both in law and business practice. In the circumstances as summarised above, the law prohibits the Plaintiffs from asserting that a partnership existed as long as there is no proof that there was any exemption under the **Business Names Registration Act**.

20 I therefore find and hold that no partnership existed between the parties.

Issue 2: Whether the parties are liable to account for the periods they respectively operated the suit vehicle?

Counsel for the Plaintiffs submitted that the Defendant collected the suit vehicle from Chatha Investments (U) Ltd on 8th August 2007 which is an agreed fact and the Defendant stayed
25 with the vehicle from 22/8/2007 till 28/2/2008 when it was impounded. The Defendant is therefore liable to account for that period as per the provisions of **Section 32(1)** of the Partnership Act.

Counsel for the Defendant on the other hand submitted that the Plaintiffs and the Defendant were at fault for failing to appropriately run their intended partnership within the confines of
30 the Partnership Act that requires one to ascertain their capital contribution. Since I have

found and held that there was no partnership under issue 1 then this issue is resolved in the negative.

Issue 3: Whether the Counter-Plaintiff was unlawfully arrested and detained and if so, Whether the Counter-Defendants are liable?

5 Counsel for the Plaintiffs submitted that the Plaintiffs were justified to report to police and have the Defendant arrested because this was in a bid to prove that the Defendant had committed the offence of unlawful use of the motor vehicle contrary to **Section 284** of the Penal Code Act. The detention was therefore lawful and the Plaintiffs are not liable. He added that it was the Police that arrested the Defendant and the Plaintiffs cannot be held
10 liable for the acts of the Officers of the Uganda Police Force.

Counsel for the Defendant submitted that **Directive Principle XXIX (f)** of the Constitution of the Republic of Uganda, 1995 obligates the Counter Defendants to uphold the rule of law and prove that there was a justifiable reason for the counter-claimant's arrest and detention. That the Plaintiffs did not prove that **Article 23 (3)** of the Constitution was complied with
15 and they therefore infringed on the Defendant's freedom for which he is entitled to damages of UGX 200,000,000/= as per the case of **Siewchand Ramanoop versus A.G Trinidad and Tobago**.

The findings of the Court under this issue are that there was a Police case under CRB454/2008 and the complainant was Biryabarema Deo, the 2nd Plaintiff. The Defendant
20 was arrested on 26/2/2008 and released on 28/2/2008 after signing an agreement exhibit P6. That was done in the presence of Alex Asingwire, the 1st Plaintiff.

Counsel for the Plaintiffs, Mr.Bwiruka cross-examined the Defendant about the agreement he made at Fort Portal Police. The Defendant answered that she made that agreement in order to get out of Police. Since the matter of the vehicle was basically a civil matter as the Police told
25 the Defendant on pages 46-47 of the proceedings, then the arrest and detention of the counter-Plaintiff was unlawful and I find the counter-Defendants liable. There was no justification to report a colleague who had contributed a bigger portion of money towards the purchase of the vehicle to Police. I reject the submissions by Counsel for the Plaintiffs that it was the Police who are liable. They acted upon the accusation of the Plaintiffs/counter-defendants. The
30 counter-claimant is therefore entitled to redress under **Article 50** of the Constitution of the Republic of Uganda, 1995, by way of general damages.

In **Kalemera & Others versus Unilever (U) Ltd & Another [2008] HCB 134**, it was emphasised that general damages are what may be presumed by law to be the necessary result of the Defendant's wrongful act. It was further held that the Plaintiff may not prove that he or she suffered general damages. That it is enough if he or she shows that the Defendant owed
5 him a duty of care which he/she breached.

In the present case, I find and hold that the counter- defendants owed the counter-claimant a duty of care as a colleague with whom they had purchased a vehicle and should not have caused his arrest and detention at Police for 2 days. Counsel for the counter-claimant had suggested a figure of UGX 200,000,000/= . I find that amount of money on a higher scale
10 considering the circumstances of this case, I find and hold that an amount of UGX 20,000,000/= (Twenty million) is appropriate and reasonable.

Issue 4: Whether the Counter-Defendants unlawfully took possession of the suit vehicle?

Counsel for the Plaintiffs submitted that the Plaintiffs by agreement dated 28/2/2008 were given the suit vehicle. The agreement was made without the involvement of Police. The
15 Defendant did not seek to challenge that agreement even after his release.

Counsel for the Defendant on the other hand submitted that the Plaintiffs had no right to assume physical possession and management of the vehicle and they were forceful in the Police arrest and detention. That the suit vehicle was not even registered in their names and thus the counter-claimant is entitled to relief under **Article 50** of the Constitution of the
20 Republic of Uganda, 1995.

Under this issue, I agree that whereas the vehicle was registered in the names of the counter-claimant, he was entitled to inform the counter-defendants of how the business was running, irrespective of whether it was a partnership or not. That is because they had contributed towards the purchase of the same.

25 However, the blame also goes to both the counter-claimant and counter Defendants for failing to appropriately run their intended partnership within the confines of the partnership Act which requires them to ascertain their capital contribution.

The counter-defendants took possession of the suit vehicle in that apparent confusion brought about by both sides. And in the end, following the Nakawa case, the vehicle was taken away

from both sides. So I decline to condemn the counter-defendants in damages. I do so in the exercise of this court's powers under **Section 98** of the Civil Procedure Act.

Issue 5: What remedies are available to the parties?

5 Counsel for the Plaintiffs submitted that the Defendant failed to account for the proceeds of the vehicle when it was in his possession from the 22/8/2007 to 26/2/2008. He should therefore be ordered to account for UGX 7,665,420/=.

10 Counsel for the Plaintiffs added that the Defendant's actions caused the Plaintiffs to fail to engage in a fruitful passenger business. The Plaintiffs suffered greatly in tracing the vehicle which the Defendant was operating until intervention of Police. That in the circumstances the Defendant should pay the Plaintiffs general damages to a tune of UGX 50million with interest as per the provisions of **Section 26** of the Civil Procedure Act.

Counsel for the Defendant on the other hand submitted that the Plaintiffs' suit be dismissed and the Defendant be granted the reliefs prayed for in the Counter claim.

15 Having found and held that no partnership existed between the parties, and as both sides were at fault for failing to appropriately run their business within the partnership Act to ascertain their contribution, then the Plaintiffs are not entitled to any unaccounted for funds from the Defendant or general damages. Instead since I have found and held under the **counter-claim** that the counter-claimant Rwakojo Grace was unlawfully arrested and detained at the instance of the Plaintiffs, then they are liable to pay him UGX 20,000,000/= as general damages for
20 causing the wrongful arrest and detention. I also, order the Plaintiffs to pay costs to the Defendant in the main suit. Each side to meet their own costs in the counter-claim.

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WILSON MASALU MUSENE

25 **JUDGE**

18/12/2018