

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
CIVIL SUIT NO. 887 OF 2004

HIRAA TRADERS LTD. ::: PLAINTIFF

VERSUS

ISMAIL NANGOLI ::: DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE.

J U D G M E N T:

The plaintiff company sued the defendant for the recovery of Ug.Shs.7,200,000/= being outstanding monies on the sale to the defendant of a Toyota Hiace Motor Vehicle Reg. No. UAB 081.

The brief facts of the case are that the plaintiff sold a Toyota Hiace, Reg. No. UAB 081 to the defendant at the cost of Ug.Shs.12,500,000/=. It is alleged that the defendant made a down payment of Ug.Shs.3,000,000/= leaving a balance of Ug.Shs.9,500,000/=. The plaintiff then received from the defendant's employer M/S Trans Sahara International Ltd, by way of set off, a further payment of Ug.Shs.2,400,000/=. This left a balance of Ug.Shs.7,100,000/= payable within a period of 4 months.

It is alleged that the defendant took possession of the vehicle and gave the plaintiff post dated cheques as security for the debt. The plaintiff now seeks recovery of the said Ug.Shs.7,100,000/=, interest at 35% on the outstanding amount, general damages and costs of the suit.

The defendant filed a defence through M/S Tusasirwe & Co. Advocates who even accepted service of the hearing notices. However neither the defendant nor his counsel attended Court at the time of hearing the case. The plaintiff was then allowed to proceed with his case as the defendant failed to defend the case in person or by counsel without due cause being told to Court.

Ms Betty Munaabi Advocate appeared for the plaintiff for the plaintiff.

For ease of determining this case Court has framed 2 issues for determination namely;

1. Whether the plaintiff is entitled to the recovery of Ug.Shs.7,200,000/= being the balance of the sale price of the vehicle.
2. Whether the plaintiff is entitled to the other remedies prayed for.

Issue No. 1: Whether the plaintiff is entitled to the recovery of the Ug.Shs.7,100,000/= being the balance of the sale price of the vehicle.

Mr. Mazaar Quresh Qayyum the Managing Director testified on behalf of the plaintiff company as PW1. Mr. Quresh testified that his company was in the business of importing motor vehicles for sale in Uganda. Mr. Quresh said that he knew the defendant who worked as an accountant for M/S Trans Sahara International Ltd. which operated on Internal Container Depot (ICD) in Nakawa Kampala. The plaintiff company used the said ICD to store their cars, I believe pending sale and clearing of local taxes. Mr. Quresh testified that the defendant approached him to sell him a Toyota Hiace on credit. The original understanding was that the defendant would pay a deposit of Ug.Shs.3,000,000/= and the balance would be paid in 4 months. It was agreed that the sale price would be Ug.Shs.12,500,000/=. A Toyota Hiace Reg. No. UAB 081, Chasis No. YX61V-001701 model 1988 was identified for sale.

The defendant then paid the Ug.Shs.3,000,000/= (leaving a balance of Ug.Shs.9,500,000/=) and was issued a receipt dated 22nd February 2000 exhibit P2. The defendant also issued 7 post dated cheques for the month April (2 cheques) to September 2000 as security but told the plaintiff not to bank them (Exh. ID1). The cheque were for Ug.Shs.9,500,000/=. .

The vehicle was then taken by the defendant but the motor vehicle logbook remained with the plaintiff company.

Mr. Quresh further testified that the defendant Mr. Nangoli then made arrangements with his employers M/S Trans Sahara International Ltd. to further credit the plaintiff company with Ug.Shs.2,400,000/= on behalf of the defendant. This is because the plaintiff company had a running account with M/S Trans Sahara International Ltd. This Mr. Quresh testified was done by M/S Trans Sahara International Ltd. Managing Director Mr. Yusuf Manafa thus leaving a balance of Ug.Shs.7,100,000/=. It was then agreed that the defendant would pay this balance within 2-4 months. This was not done.

Mr. Quresh then testified that on the 18th July 2000 the defendant requested the plaintiff to renew the road licence of the motor vehicle as they still held the logbook. The defendant offered a further payment of Ug.Shs.600,000/= against the balance as some act of good will to pay the balance.

The defendant made this request by letter dated 18th July 2000 Exh.P3. by the said letter the defendant said that he was not able to pay as expected on the grounds that;

“...the return of this vehicle have been so low compared to my anticipated figures.”

Mr. Quresh refused the offer of Ug.Shs.600,000/= which he said was too little. He however allowed the road licence to be renewed from July to November 2000.

He further testified that no further renewal of the road licence has been made through him or the plaintiff company.

No evidence for the defendant was ever tendered to Court as the defendant and his counsel did not attend Court. However a defence was filed on Court record.

According to Para 4 of the defence it was pleaded;

" 4. The defendant admit(s) having entered into an agreement with the plain (tiff) (sic) for the purchase of a motor vehicle stated in the plaint, and states that the agreement was expressly agreed that:-

(a) The proceeds earned from the transport business to which the motor vehicle was to be put were to be used to pay off the balance of the purchase price.

(b) The plaintiff would remain with the logbook of the car as a security and would at all times help the defendant with the logbook to enable the latter to renew the road licence so as to be able to do business and get money to pay the outstanding balance on purchase price."

Furthermore the defence states;

- “ 5. During the month of September, 2000 the suit motor vehicle was involved in an accident along Kampala-Jinja Road which was grounded until January 2001.*
- 6. When the motor vehicle was finally repaired, the plaintiff in breach of agreement refused to give the defendant the logbook so as to be able to renew the road licence up to date, as a result the defendant failed to raise money to pay the plaintiff.*
- 7. The defendant avers and contends that due to the accident and the plaintiff's breach of contract have stopped him from using the suit motor vehicle so as to raise the money to complete payment of the purchase price.*
- 8. The defendant avers and states that this suit is premature and wrongly before Court because in April 2002 at the instance of the plaintiff's lawyers M/S Blackstone Law firm, it was agreed that the plaintiff assist the defendant renew the road licence and payment schedule was made and accepted by both parties, therefore the defendant paid a deposit of Ug.Shs.300,000/=. Copies of the payment schedule and a receipt from the plaintiff's lawyer are attached hereto and marked 'A' and 'B' respectively...”*

In direct response to Para 4,5,6 and 7 of the defence Mr. Quresh denies that there was an agreement whereby the plaintiff would be paid from the proceeds earned from

the motor vehicle. Mr. Quresh states that he has no knowledge of any payment schedule and payment made to M/S Blackstone Law firm. This situation is even made more complex in that the defence filed, has no annexures whatsoever as pleaded in Para 9 thereof.

I have reviewed the pleadings and evidence placed before Court. I must say from the onset that a review of the Court file shows a reluctance by the defendant to effectively defend this case. The defendant did not show up when the file was still before Justice Tabaro in the Civil Division, when the file was sent to mediation under the rules of this Court and when the file came up for trial before me.

The evidence before Court clearly shows that there was no written agreement between the plaintiff and the defendant. The Court therefore has to rely on oral evidence to establish the contract between the two parties and its terms.

I find that evidence of PW1 Mr. Quresh was credible and in line with much of market practices of motor vehicles sold on credit and secured with post dated cheques and the logbook being retained. In any event it was not controverted by evidence by the defendant.

The defence of the defendant as outlined in the written statement of defence leaves a lot to be desired. The defendant avers that the purchase price was to be cleared through the earnings of the said motor vehicle. However, the motor vehicle had an

accident thus cutting the source of income to pay the purchase price (sic). This sounds like an excuse to me rather than a legal defence. I do not find it credible. I also do not find as credible what is averred in Para 9 of the defence that a new payment was agreed to by the parties and a payment of Ug.shs.300,000/= was made. This is because no copies of the new arrangement were annexed to the defence as pleaded.

All in all I find that the Plaintiff is entitled to recover the Ug. Shs.7,100,000- as prayed and I accordingly award it to them.

Issue No. 2: Wether the Plaintiff is entitled to the other remedies prayed for.

The Plaintiff has prayed for the following additional remedies namely interest, general damages, and costs of the suit.

Interest:

The Plaintiff has prayed for interest at 35% p.a and the outstanding amount from the time it was due until payment thereof. Counsel for the Defendant argued that under S. 26 of the Civil procedure Act Court is empowered to award reasonable interest giving regard to the circumstances of the case. She further argued that 35% is reasonable given that the Plaintiff required the money to further its vehicle importation business.

I find that interest at 35% p.a is above the average commercial interest rate in the financial institutions of 24% p.a. I grant interest at 24% p.a.

General damages:

Counsel for the Plaintiff argued that according to the learned author Mc Gregor on Damages 14th ed P.6 para 7 the object of an award of damages is to give the Plaintiff compensation for the damage, loss or injury he has suffered.

The evidence of PW1 was that the Plaintiff company made a minimum loss of Shs.21,000,000- over the 5 years the Shs.7,100,000- was not paid. I found this calculation very speculative indeed and not of much assistance in computing the damages. It is not clear how the non payment of the Shs.7,100,000- would have led to a loss of Shs.21,000,000-. It is not clear whether the Shs.7,100,000- would have even led to a business profit of that margin. I would in my discretion think that business margin of Ug.Shs.1,500,000- per year for 5 years giving damages of Shs.7,500,000- as reasonable.

However before I make the award it is important to note that PW1 Mr. Quresh gave evidence that Shs.600,000- was offered to him in July 2000 and he refused the money as too little. I find that this refusal was un business like and a failure to mitigate his loss. It is trite law that a litigant is always under a legal duty to mitigate his/her loss

and cannot benefit in damages what he failed to mitigate. I would therefore deduct this amount of Shs.600,000- and grant General damages of Ug. Shs.6,900,000-.

Costs of the suit:

I award costs of the suit to the Plaintiff.

Geoffrey Kiryabwire

J U D G E

Date: **30/11/05**