



**Aisha Motor Dealers Ltd v Guru (Civil Appeal E301 of 2023)
[2023] KEHC 27229 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEHC 27229 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E301 OF 2023
DKN MAGARE, J
DECEMBER 20, 2023**

BETWEEN

AISHA MOTOR DEALERS LTD APPELLANT

AND

GEORGE MWANIKI GURU RESPONDENT

JUDGMENT

1. This is an appeal from the Small Claims Court, Hon. Gatambia Ndungu given on 26/9/2023 in E071 of 2023. It relates to an unregistered hire purchase agreement dated 13/4/2021.
2. The Court found for the claimant. The Appellant appealed and set forth the following 3 grounds: -
 1. The learned adjudicator erred in law in introducing the issue of unconscionability of the contract which had not been pleaded.
 2. The learned adjudicator erred in finding unconscionability absent evidence.
 3. The learned adjudicator erred in law in granting reliefs which amounted to unjust enrichment.
3. The parties had agreed to proceed by way of documents. The vehicle was repossessed and no surplus proceedings were refunded to the Respondent. The amount of money that was to be released was Kshs. 360,000/= by instalments after payment of 500,000/=.
4. The claimant paid Kshs. 30,000/= and defaulted. The claimant stated that the Appellant continued to insist the payment of arrears. The Court recalls that Kshs. 500,000/= was not part of the hire purchase amounts.
5. This was a deposit received. The Court was wrong in adding recovery of Kshs. 30,000/=. The sum of Kshs. 500,000/= belonged to the Respondent.



6. The appellant repossessed the vehicle and did not allow redemption. The Court was right to and in finding that the conduct was unconscionable. Save that the refundable amount was the cash deposit. It is not the duty of the Court to release a party from an agreement.
7. Though indicated on the heading as hire purchase, the agreement was in reality a sale agreement as per paragraph 1 of the agreement that the vehicle is sold on the basis of as – is where is basis.
8. It is thus inconsumable to sale a vehicle already sold without refund of the consideration paid.
9. In the circumstances, other than correct of the amount to Kshs. 50,000/= the claim is dismissed with costs of Kshs. 65,000/= to the Respondent.

Determination

10. I make the following determination: -
 - a. The amount to be paid by the appellant is reduced from Kshs. 530,000/= to Kshs. 500,000/=.
 - b. The appeal is dismissed with cost of Kshs. 65,000/= to the Respondent
 - c. The file is closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 20TH DAY OF DECEMBER, 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Mr. Kongere for Appellant

Mr. George Kimani for the Respondent

Court Assistant - Brian

