



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 743 OF 2012

PETER MAINA MWANGI.....PLAINTIFF

VERSUS

DAQARE TRANSPORTERS LIMITED.....DEFENDANT

JUDGMENT

1. This suit arises from a Motor Vehicle Lease Agreement dated 1st June 2012.
2. Pursuant to that Agreement, the plaintiff, **PETER MAINA MWANGI**, hired out his vehicle to the defendant, **DAQARE TRANSPORTERS LIMITED**.
3. It is common ground that the vehicle in issue was a “**MITSUBISHI FH WATER BOOZER**”, registration number **KAQ 641 U**.
4. It is the plaintiff’s case that the defendant was required to pay to the plaintiff, a monthly rental fee amounting to Kshs. 400,000/-. However, the defendant is alleged to have defaulted.
5. As a consequence of the said defaults, the defendant is alleged to have accumulated a debt amounting to Kshs. 1,305,000/-. The plaintiff then filed this case, with a view to recovering that debt. The plaintiff also asked for interest on the principal debt, to be calculated at court rates.
6. Finally, the plaintiff asked for costs of the suit.
7. In its Defence, the defendant admitted that there was a contract between it and the plaintiff, dated 1st June 2012. However, he denied the plaintiff’s contentions regarding the ownership of the vehicle which the plaintiff hired out to the defendant.
8. As regards the plaintiff’s contention that the rental charges were Kshs. 400,000/- monthly, and that the defendant had defaulted, it was the defendant’s position that those assertions were not entirely correct. In the circumstances, the defendant indicated that it would seek further and better particulars.
9. However, the defendant never took any steps to seek any further or better particulars.
10. The plaintiff had asserted that the defendant issued a cheque for Kshs. 200,000/- in the name of **PETER MAINA MAINGI**. The said cheque was dishonoured when the plaintiff banked it.
11. The plaintiff is **PETER MAINA MWANGI**. Therefore, as far as the defendant was concerned, the plaintiff should not have banked the cheque issued in the name of **MAINGI**. The defendant’s position was that **MWANGI** ought to have given back that cheque to the defendant.
12. At paragraph 6 of the Defence, the defendant denied issuing a cheque for Kshs. 500,000/- when it had insufficient funds in its
13. account.
14. On his part, the plaintiff had specified that the defendant’s cheque dated 5th September 2012 was Number 000641, and that it was dishonoured. Furthermore, the plaintiff’s bank charged the plaintiff the sum of Kshs. 1,800/- in respect to the said cheque, when it was dishonoured.
15. In effect, the plaintiff had provided full particulars of the cheque that had been dishonoured.

16. The defendant's other line of Defence was that the plaintiff was under an obligation to provide the defendant with a schedule of the work which the plaintiff had done for the defendant. The need for that work-schedule was said to have arisen because the vehicle in issue was at all material times under the control of the driver employed by the plaintiff.
17. The foregoing summarises the pleadings filed by the parties.
18. When the case came up for hearing on 3rd December 2014, the defendant and its advocates failed to attend court. The court asked Mr. Kinuthia, the learned advocate for the plaintiff, to try and contact the advocate for the Defendant.
19. When the case was called out later that morning, Mr. Kinuthia advocate informed the court that he had talked to Mr. Onindo, the learned advocate for the defendant. The two had, reportedly, talked over the phone.
20. According to Mr. Onindo, he was in Migori, but he had left this case in the hands of his brother.
21. In the light of the fact that the defendant's advocates were served with a Hearing Notice on 2nd October 2014, they ought to have been in court, together with their client. Their absence was not explained to the court. Therefore, the hearing went ahead in the absence of the defendant.
22. In his testimony, the plaintiff testified that he leased the vehicle Registration No. **KAQ 641 U** to the Defendant.
23. The plaintiff produced the original log book for that vehicle, confirming that he was the registered owner. Therefore, there is absolutely no doubt about the fact that the vehicle belonged to the plaintiff.
24. The plaintiff also produced the original Motor Vehicle Lease Agreement dated 1st June 2012. The Agreement was duly executed by both parties, in the presence of Mr. Dominic Onindo, Advocate.
25. Even though the defendant suggested that the plaintiff had an obligation to provide a schedule for the work done using the vehicle, it is noted that the contract did not contain any such a requirement.
26. The payment of the monthly hire charges of Kshs. 400,000/- was not conditional upon the plaintiff providing any schedule.
27. Secondly, pursuant to Clause 6 of the Agreement, the plaintiff was required to hand over the vehicle to the defendant. Therefore, the defendant's allegation, that the vehicle was supposed to remain under the physical control of a driver employed by the plaintiff, is inconsistent with the contract.
28. I find that the plaintiff handed over the vehicle to the defendant on 1st June 2012, in accordance with the Lease Agreement.
29. In accordance with Clause 4 of the Agreement, the defendant first paid Kshs. 200,000/-, which was 50% of the monthly fee. The defendant was supposed to pay the other 50% upon receiving the vehicle. However, although the vehicle was delivered to the defendant, the said 50% of the first month's payment was not paid.
30. In effect, the defendant defaulted at the very start of the Agreement.
31. The next payment by the defendant was of Kshs. 95,000/-, which was paid on 22nd August 2012.
32. Meanwhile, a cheque for Kshs. 200,000/- was drawn by the defendant on 16th July 2012. But that cheque was dishonoured because it was not drawn in favour of the plaintiff.
33. And the cheque No. 000641 for Kshs. 500,000/- was drawn by the defendant on 5th September 2012. But that cheque was dishonoured because the defendant had insufficient funds in its account.
34. By a letter dated 12th September 2012, the plaintiff's advocates, **M/s L.M. KINUTHIA & ASSOCIATES, ADVOCATES**, issued a demand Notice to the defendant. In that Notice, the plaintiff demanded Kshs. 924,567/- plus interest at the rate of 14% per annum. The plaintiff also demanded the sum of Kshs. 1,800/- which had been debitted against his account, after the defendant's cheque was dishonoured.
35. In total, the plaintiff demanded Kshs. 1,096,097/-, as at 12th September 2012.
36. By my calculations, the defendant should have paid to the plaintiff, the sum of Kshs. 1,600,000/- during the four (4) months between June and September 2012. That sum is arrived at when it is borne in mind that every month, the defendant should have paid Kshs. 400,000/-.
37. However, the defendant paid Kshs. 295,000/- only.
38. By my calculations the balance due from the defendant should have been Kshs. 1,305,000/-.

Nonetheless, the plaintiff's Demand Notice dated 12th September 2012, asked the defendant to pay Kshs. 924,567/-.

39. Furthermore, by a letter dated 3rd October 2012, the plaintiff's advocates demanded Kshs. 1,096,097/-, which they described as constituting:

"... the amounts not paid within three months..."

40. I must say that I did not understand how those figures were computed.

41. But I do find that pursuant to Clause 16 of the Lease Agreement, the said Agreement was terminable by a 30 Days' Notice.

42. The plaintiff issued the Notice of termination in September. Therefore, the period of the contract was four months, inclusive of the Notice period.

43. In the circumstances I find that the defendant is liable to pay to the plaintiff the sum of Kshs. 1,305,000/-, pursuant to the terms of the Motor vehicle Lease Agreement dated 1st June 2012. I therefore grant judgment in favour of the plaintiff for;

a. Kshs. 1,305,000;

b. Interest at court rates from the date of filing suit (i.e 29th November 2012), until payment in full;

c. Costs of the suit.

DATED, SIGNED and DELIVERED at NAIROBI this 18th day of February 2015.

FRED A. OCHIENG

JUDGE

Judgment read in open court in the presence of

Kiche for Kinuthia for the Plaintiff.

No appearance for the Defendant.

Collins Odhiambo – Court clerk.