



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL APPEAL NO. 14 OF 2009**

CMC MOTORS GROUP LTD..... APPELLANT

VERSUS

REUBEN WANYONYI SIMIYU.....RESPONDENT

**J U D G M E N T**

1. Being dissatisfied with the Judgment of the Senior Resident Magistrate at Kitale in CM.CC.No.565 of 2004, the appellant, CMC Motors Group Limited, preferred this appeal on the basis of the grounds contained in the memorandum of Appeal dated 17th August, 2009 drawn and filed by Mukite Musangi & Co. Advocates.
2. The appeal proceeded by way of written submissions and in that regard, the appellant's submissions were filed on the 11th March 2015, while those of the respondent, Reuben Wanyonyi Simiyu, were filed on 28th January 2015. Having considered the grounds of appeal in the light of all the submissions the duty of this court was to re-visit the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.
3. The evidence led by the appellant through its witnesses, Evans Omwenga (DW1) and Shadrack Mwongela Musyoki (DW2), was thus considered alongside that of the respondent (PW1). Apparently, there was no dispute that in the month of May 1999, the respondent entered into an agreement with the appellant for the purchase of a motor vehicle at a total cost of Kshs.950,000/=.
4. The appellant was the supplier of the motor vehicle but the necessary hire purchase agreement was between the respondent and the National Industrial Credit Bank Ltd. (NIC), which partly financed the purchase of the vehicle by the respondent. It was the respondent's evidence that the vehicle was surrendered to N.I.C. After the agreement was executed and prior to its released to him.
5. The vehicle's log book was to be released to N.I.C. For registration in the joint names of the respondent and the N.I.C. And was to be released to the respondent on completion of the repayment of the appropriate loan. According to the respondent, he completed the necessary payments in the year 2001 but earlier in the year 2000, he was notified by the Registrar of motor vehicles that the vehicle could not be registered without the necessary customs clearance certificate and other documents which were to be presented by the appellant.

6. Come the year 2004, the vehicle's log book had not been received by the respondent from the appellant or the N.I.C. The respondent concluded that the responsibility to provide him with the log book lay with the appellant. He therefore filed suit against the appellant for an order compelling it to release the necessary log book failing which the Registrar of Motor vehicles be ordered to issue a new log book and / or duplicate log book.
7. In its denial of the respondent's claim, the appellant contended that under the material hire purchase agreement, there was no obligation bestowed upon it to provide or pursue the log book which was intended to serve as security for the credit facility advanced to the respondent by the N.I.C. And which log book was to be held as such by N.I.C.
8. According to the appellant; Accountant (DW1), all the necessary documents to facilitate registration of the vehicle in the joint names of the respondent and N.I.C. Were forwarded to the Kenya Revenue Authority (KRA) by the appellant. All necessary payments required from the appellant for the transfer of the log book to the respondent were also made and all that remained was for the respondent to pay necessary fees to the KRA.
9. The appellant contended that the obligation to transfer the log book to the respondent lay with the N.I.C. As it was expected to receive the log book from KRA and have it as security for the repayment of the money advanced to the respondent by itself. The appellant (DW1) indicated that the N.I.C. Was holding the log book pending payment of a specified fee by the respondent.
10. The N.I.C. Legal officer (DW2), indicated that the application to have the motor vehicle registered in joint names was forwarded to them as they were expected to receive the log book from KRA and hold it as security. Indeed, they received a copy of the log book in the year 2005 and it showed that the vehicle was registered in the joint names of the respondent and N.I.C. On 22nd January 2001. However, the log book could not be released to the respondent as he failed to pay the required archival fees.
11. From all the foregoing, the issue that presented itself for determination was whether the respondent was entitled to an order compelling the appellant to release the material log book. An order was also sought to have a new log book and / or duplicate log book issued by the Registrar of motor vehicles even though the registrar was not made a party to this suit as he should have.
12. Be that as it may, the lower court in its judgment was clear that the log book was indeed received from the K.R.A. By the N.I.C. But attempts were made by N.I.C. To hide the fact although it eventually produced the log book in court during the trial. That, being the position, the trial court erred by finding that it was the appellant rather than N.I.C. Which was responsible for failure to avail the log book to the respondent especially when consideration is given to the fact that the appellant satisfactorily completed its role in ensuring that the vehicle is registered in the joint names of the N.I.C and the Respondent.
13. Seems to this court that the lower court believed that the emergence of the log book during the trial was no more than a play by the appellant to beat the respondent's claim since the appellant on the 7th September 2007, undertook to avail the log book but renegaded on the promise. The lower court wondered why the appellant would avail a log book if it was under no obligation to produce it. It was apparently for the foregoing reason that the lower court found in favour of the respondent and entered judgment against the appellant.
14. This court is of the view that the decision was based on wrong considerations and therefore vest against the weight of the evidence which clearly showed that the respondent had no cause of action against the appellant based on the hire – purchase agreement entered between himself and N.I.C. Further, it remained undisputed that the log book was held as security by the N.I.C. Which then had the responsibility for releasing it to the respondent upon full payment of the credit facility extended to him. At no point did that responsibility fall upon the appellant.
15. Therefore, the respondents claim against the appellant was unproved thereby rendering the judgment entered against the appellant unfair and improper. This court finds merit in this appeal and allows it to the extent that the judgment of the lower court delivered on 22nd July 2009 is hereby set aside and substituted with a judgment dismissing the respondent's case with costs. The appellant shall also have the costs of the appeal

Ordered accordingly.

**J. R. KARANJA**

**JUDGE**

**Delivered and Signed this 26th day of May, 2015.**

**J. R. KARANJA**

**JUDGE**