



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 51 OF 2012

IMPERIAL BANK OF KENYA.....PLAINTIFF

- VERSUS -

KARIUKI CONSTRUCTION COMPANY LIMITED.....1ST DEFENDANT

JULIUS KARIUKI MWAURA.....2ND DEFENDANT

JOYCE WANJIRU KARIUKI.....3RD DEFENDANT

RULING NO. 2

1. On 12th November 2014 this court set aside the judgement which had been delivered on 13th February 2014. The reason for setting aside the said Judgement was that there was an error apparent on the face of the Judgement.
2. In its Judgement, the court had dismissed the plaintiff's claims;
 - a. **Against the 1st defendant, under the Hire Purchase Agreement; and**
 - b. **Against the 2nd and 3rd defendants in relation to the Guarantee document.**
3. The said decision was premised upon the failure by the plaintiff to register the Hire Purchase Agreement, and also because the learned trial Judge was convinced that the Guarantee document was not authentic. The trial court had concluded that the document which was adduced in evidence had been doctored.
4. When called upon to review the judgement, this court set aside the decision against the 1st defendant. However, the dismissal of the claims against the 2nd and the 3rd defendants remained intact.
5. The reason why I set aside the dismissal of the case against the 1st defendant was that the trial court had not taken into account the provisions of Section 3 (1) of the Hire Purchase Act.
6. Ordinarily, when a decision is reviewed by a court, the said court would make further orders which were consequential upon the said orders of review. For example, in this case, after setting aside the dismissal of the suit against the 1st defendant, I would normally have proceeded to grant Judgement in favour of the plaintiff. But I did not do so.
7. I made a conscious decision to withhold any consequential orders because neither the plaintiff nor the 1st defendant had addressed the court on the consequences or effects of Section 3 (1) of the Hire Purchase Act. In those circumstances, if I had proceeded to make a determination, by taking into account the provisions of that statutory provision, I would have taken action without having

given the parties an opportunity to address the court on section 3 (1) of the Hire Purchase Act. That section reads as follows;

“This Act applies to and in respect of all hire purchase agreements entered into after the commencement of this Act under which the hire – purchase price does not exceed the sum of four million shillings or such other higher or lower sum as the Minister may prescribe other than a hire – purchase agreement in which the hirer is a body corporate, wherever incorporated; but that monetary limitation does not apply so as to affect the definition of “hire – purchase business” in section 2 (1)”.

8. Between the 2 parties to the hire – purchase Agreement dated 7th January 2008, there is no doubt that the plaintiff advanced to the 1st defendant, the sum of Kshs. 2,297,140.00. The said sum was for use in the purchase of a motor vehicle Registration Number **KAZ 917 L**.
9. The plaintiff, **IMPERIAL BANK of KENYA** is a limited liability company.
10. In the light of the provisions of Section 3 (1) of the Hire-Purchase Act, the plaintiff reasoned that the statute was not applicable to the Agreement in issue in this case.
11. On the other hand, the 1st defendant, **KARIUKI CONSTRUCTION COMPANY LIMITED**, held the view that bodies corporate were not excluded from the ambit of the Act.
12. Both parties are in agreement, that when a court of law was called upon to interpret the provisions of a statute, the following maxim is applicable:

“Expressio unius est exclusio alterius.”

13. Loosely interpreted, that maxim relays the message that when one thing is expressed or is included, that implies that the others or the alternative are excluded.
14. The plaintiff relied on the following authority to emphasize the importance of construing words in their ordinary and natural meaning: **ORENGO Vs MOI & 12 OTHERS (No. 3) [2008] 1 KLR;**

“...the court’s duty is to interpret the law, as it is gleaned from the intention of parliament from the words used in the statute being construed. That the plain words of a statute, being precise and unambiguous, should be given their ordinary and natural meaning”.

15. The reason for that pronouncement is that the primary function of the courts is to interpret the law which has been enacted by parliament. Therefore, when the law-maker lays down precise words, whose meanings were clear, the court is obliged to interpret those words in a manner that does not deviate from the ordinary and natural meaning of such words.
16. On its part, the defendant relied on the decision in **KIPKEMOI TERER Vs JOHN LANGAT & 3 OTHERS, ELECTION PETITION No. 1 of 2013** for the proposition that;

“...courts do not and should not construe the law to bring out what parliament ought to have legislated. The courts should, and we are no exception, construe the intention of parliament as clearly expressed in the statute in question”.

17. Once again, the two parties are reading from the same page.
18. It is obvious that where the words used in a statute are clear, there should be little, if any, need for interpretation.
19. In **NGOBIT ESTATE LIMITED Vs CARNEGIE, CIVIL APPEAL No. 57 of 1981** Porter J A said;

“The function of the Judiciary is to interpret the statute law, not to make it. Where the meaning of a statute is plain and unambiguous, no question of interpretation or construction arises. It is the duty of the Judge to apply such law as it stands”.

20. In this case, the plaintiff submitted that Section 3 (1) of the Hire Purchase Act is not applicable to hire – purchase Agreements in which the hirer is a body corporate. That submission was based on the decision in **DIAMOND TRUST BANK KENYA LIMITED (FORMERLY DIAMOND**

TRUST of KENYA LIMITED) Vs JASWINDER SINGH ENTERPRISES CIVIL APPEAL No. 285 of 1998. In that case, Owuor J A held as follows;

“To my mind I understand Section 3 (1) of the Act should be read as follows:-

‘3 (1) The Act applies to and in respect of all hire – purchase agreements ... other than a hire – purchase agreement in which the hirer is a body corporate whichever incorporated’

The words “other than” should be read to mean “except”. The section therefore excludes all the agreements where the hirer is a body corporate from the protection of the Act”.

21. That pronouncement was made on 2nd July 1999.

22. Many years later, on 22nd October 2010, the Court of Appeal had occasion to interpret Section 3 (1) of the Hire Purchase Act. That was done in **TAAWAWA SUPERMARKET LIMITED, Vs FINA BANK LIMITED, CIVIL APPEAL No. 118 of 2002.** This is what the Court said;

“That section is not, with respect, happily worded. In our view it is capable of two constructions, namely; that the Act does not apply to all where the hirer is a corporation, which is the construction adopted by Mr. Mbigi; or that the monetary threshold applies only to individual hirers but not corporate hirers who will be covered by the Act regardless of the monetary consideration in the transaction, which is the construction adopted by Mr. Ombwayo. None of the advocates cited any authority for their respective propositions and we have not been able to find any. We must therefore decide the matter on first principles”.

23. It is evident that the decision by Owuor J A (*in Civil Appeal No. 285 of 1998*) was not brought to the attention of the bench comprising Bosire, Githinji and Waki JJ A.

24. The learned Judges of Appeal went on to determine the issue thus;

“There is no doubt that the Act would be inapplicable on the basis of the monetary threshold since the subject matter was here beyond the upper limit of Kshs. 300,000/- at the time of the transaction. A pertinent hypothetical question may be asked: why would an individual hirer take advantage of the Act to a limited extent when a body corporate would not be limited by any monetary threshold? No compelling reason presents itself to us and we find, in the circumstances, that the intention of Parliament was to exclude purchases made by co-operative societies and registered companies from the operation of the Act, and not merely to remove the monetary threshold for corporations. With that finding, the issue of registration of the agreement under section 5 (1) does not arise and we reject the argument by Mr. Ombwayo that it applies to all agreements even where the Act is not applicable. Once again, logic dictates the construction that the section is applicable to hire purchase agreements to which the Act applies and requires due registration. The finding by the superior court that registration was necessary in the circumstances of this case was also erroneous and we set it aside”.

25. Although the Court did not make reference to the decision of Owuor J A, it came to the same conclusion, that Parliament’s intention, in enacting Section 3 (1) of the Hire Purchase Act, was to exclude purchases made by co-operative societies and registered companies from the operation of the Act, and not merely to remove the monetary threshold for corporations.

26. The defendant is a body corporate, and it was the hirer of the lorry that was the subject matter of the hire – purchase agreement. Therefore, the hire – purchase Agreement in this case was not subject to the provisions of the Hire Purchase Act.

27. It therefore follows, that the Hire Purchase Agreement in this case did not need to comply with the requirements for registration, as provided for by the Act.

28. I am fortified in my finding by the fact that a number of my colleagues have also, previously, come to a similar conclusion.

29. On 4th November 2009, Kimaru J. held as follows **IN THE MATTER of FIRST LOTTO LIMITED WINDING-UP CAUSE No. 9 of 2008:**

“Section 3 (1) of the Hire Purchase Act specifically excludes the application of the Hire Purchase Act on hire purchase agreements where the hirer is a body corporate”.

30. Similarly, Lady Justice J. Kimaru, held that;

“The Hire – Purchase Act was not applicable in the case herein for the reason that the Hire Purchase price was in excess of Kshs. 4,000,000/- and the plaintiff was a body corporate. The ouster of the Hire Purchase Act can be seen in Section 3 (1) of the Act...”

31. For those reasons, the dismissal of the claim against the 1st defendant, on the grounds of the non-registration of the Hire Purchase Agreement was erroneous.

32. In **JOHN MWANGI MUCHIRA Vs HYPER CARS LIMITED Hccc No. 126 of 2008**, Mabeya J. handled a case in which the Hire Purchase Agreement was in relation a motor vehicle whose value exceeded Kshs. 4,000,000/-. The learned Judge relied on Section 2 of the Hire Purchase Act to hold that the statute did not apply to the Agreement in question. He then went on to state as follows;

“In this regard, I am of the view that the Act would not apply to the agreement between the parties to this suit. In this regard, that agreement would only be enforced through the tenets of Contract Law”.

33. I am in agreement with my learned brother’s holding.

34. In the case of **TAAWAWA SUPERMARKET LIMITED Vs FINA BANK LTD CIVIL APPEAL No. 118 of 2002**, the Court of Appeal expressed itself thus;

“We may add that the failure to register did not render the agreement void or the result that the company would be refunded all the money it paid under the agreement. It retained its validity as a contract inter se and was enforceable as such”.

35. In the final analysis therefore, the plaintiff’s claim against the 1st defendant should not have been dismissed, if the only ground for so doing was the fact that the Agreement had not been registered as envisaged by the Hire Purchase Act.

36. To that extent, the application for review is successful. The dismissal of the suit against the 1st defendant is set aside. I further enter judgement in favour of the plaintiff, against the 1st defendant for sum of Kshs. 2,417,993/-. The said sum will attract interest at 18% per annum from 28th February 2011 until payment in full.

37. The costs of the application are also awarded to the plaintiff, against the 1st Defendant.

38.

DATED, SIGNED and DELIVERED at NAIROBI this 11th day of November 2015.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Miss Kageni for the Plaintiff

Miss Chege for Kamere for the 1st Defendant

Miss Chege for Kamere for the 2nd Defendant

Miss Chege for Kamere for the 3rd Defendant

Collins Odhiambo – Court clerk.