



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 111 OF 2007

FREDRICK KARANJA MIRARA.....PLAINTIFF

V E R S U S

ATTORNEY-GENERAL.....DEFENDANT

J U D G M E N T

1. The Plaintiff's uncontroverted testimony is that on 30th January 2006 he purchased from one JULIUS NJOROGE NGUGI **motor vehicle registration number KAS 870F**, make Toyota saloon (**Exhibit P1**). The purchase price was KShs 380,000/00, but he paid KShs 350,000/00, leaving unpaid a balance of KShs 30,000/00. He took delivery of the motor vehicle.

2. He duly presented the **logbook** and **transfer form** to **Kenya Revenue Authority (KRA)** for registration and paid the requisite fees (**Exhibit P2**). But he was subsequently informed by KRA that the logbook he had presented was "fake" (**Exhibit P3**). He was advised to report the matter to the police, and he duly did so at **Central Police Station, Nairobi (Exhibit P4)**.

3. Upon reporting the matter to the police, he was directed to bring the motor vehicle to the police station in order for investigations to commence, and for that purpose he was escorted by two police officers to his home, and the three of them took the motor vehicle to Central Police Station where it was impounded. He surrendered to the police the car keys and all accessories.

4. Thereafter, further testified the Plaintiff, he kept making periodic enquires at the police station regarding the investigations, and he was always assured that they were on-going.

5. He subsequently received an invitation by KRA for an interview for 19th April 2006 (**Exhibit P5**) regarding the transfer form and logbook that he had presented. In preparation for the interview he visited the police station on 8th April 2006 so that he might know the status of the investigation. He was informed at the police station that the motor vehicle was stolen from the police station in the night of 6th

April 2006.

6. Subsequently, the Plaintiff requested in writing (**Exhibit P6**) that the police do notify him in writing of the theft of his motor vehicle, but they did not.

7. The Plaintiff then sought legal advice. Subsequently a statutory notice of intended proceedings was served upon the Attorney-General by his lawyers (**Exhibit P7**). The Attorney-General responded by a copy of a letter addressed to the Permanent Secretary, Officer of the President, seeking instructions (**Exhibit P8**).

8. The Plaintiff then filed the present suit. He blames the police for the loss of his motor vehicle. They never investigated the claim of fake logbook made by KRA, and, due to their negligence, the motor vehicle was stolen from their custody. Particulars of negligence were pleaded in paragraph 9 of the plaint.

9. The Plaintiff seeks special damages of KShs 380,000/00 (the purchase price of the motor vehicle) plus interest thereon at 20% per year from 30th January 2006 (date of purchase) until payment in full. He also seeks costs of the suit.

10. The Defendant filed defence dated 29th March 2007 and denied **everything**. In a reply to defence dated 12th May 2007 the Plaintiff joined issue with the Defendant upon his statement of defence.

11. At the hearing of the suit there was no appearance for the Defendant despite due service of hearing notice upon him.

12. I have considered the evidence now before the court. The police impounded the Plaintiff's motor vehicle which he had purchased from a third party in order to investigate its alleged fake logbook. Apparently no investigations were ever conducted. The police then suffered the motor vehicle to be stolen from their custody due to their negligence. The Attorney-General is thus vicariously liable to the Plaintiff for the loss of his motor vehicle. The Plaintiff has proved his case on a balance of probabilities.

13. In the event, I will give the Plaintiff judgment against the Defendant for the sum of KShs 350,000/00 (the sum he actually paid for the motor vehicle). The Plaintiff has claimed interest at 20% per annum, but he has not given any basis for the same. I will award interest at court rates from the date of filing suit (not from 30th January 2006 as claimed) until payment in full. The Plaintiff will also have costs of the suit.

14. Those will be the orders of the court.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT THIS 29TH DAY OF JUNE, 2012

H.P.G. WAWERU
JUDGE