



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL CASE NO. 2690 OF 1997**

**CENTRAL FARMER'S GARAGE LTD.....PLAINTIFF**

**V E R S U S**

**ATTORNEY-GENERAL.....DEFENDANT**

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

The background to this suit is as follows as gathered from the testimony of PW 1, **MATHEW GARVIN NALUKULU MUKHWANA**, the only witness who testified at the hearing of the suit.

The Plaintiff is a private limited company incorporated in Kenya. It held at all material times, and still holds a franchise to deal with motor products from **General Motors (East Africa) Limited** (General Motors).

On 15<sup>th</sup> January 1993 the Plaintiff purchased from General Motors a motor bus chassis for an **Isuzu NPR 575, Chassis No 7105577** for onward sale to a customer. The invoice for the purchase was produced as **Exhibit P1**. Payment was duly made in the sum of **KShs 895,649/00**, and the motor chassis was delivered to the Plaintiff.

Some three persons as a group agreed to purchase the motor chassis from the Plaintiff for **KShs 979,985/00**. They wanted a bus body to be built on the chassis. Though they did not pay any deposit for the purchase, nevertheless the Plaintiff took the chassis to a body builder but later withdrew it therefrom when no payment was made by the customers.

The prospective purchasers then sued the Plaintiff for certain reliefs in respect to the failed purchase vide **Nairobi HCCC No. 1613 of 1994**. The court issued an order in that case on 16<sup>th</sup> September 1994 for the motor chassis to be kept in safe custody at **Kilimani Police Station** pending disposal of the suit. A copy of the order was produced as **Exhibit P2**. The motor vehicle was then taken to Kilimani Police Station.

Subsequently, the agents of the Plaintiff discovered that the motor chassis had been badly vandalised at the police station and various parts stolen from it. This fact was brought to the attention of the court in the aforesaid HCCC No. 1613 of 1994. The court then ordered for the motor chassis, or what remained of it, to be moved to **Traffic Headquarters, Nairobi** for better and safer custody.

But it would appear that the motor chassis was more unsafe at the Traffic Headquarters than it was at

Kilimani Police Station because it subsequently disappeared altogether there from and has never been seen. It was presumed stolen and irretrievably lost.

The Plaintiff's suit therefore is for recovery of the value of the motor chassis which was stolen while in custody of the **Kenya Police** by order of the court. Letters addressed to the police (**Exhibit P6**) never elicited any response.

The Defendant is sued on behalf of the Kenya Police. He filed a general defence denying liability. Due statutory notice of intention to file suit was given to the Attorney-General (**Exhibit P3**).

The court was informed that HCCC No. 1613 of 1994 was ultimately dismissed for want of prosecution.

As already seen, the Plaintiff bought the motor chassis for KShs 895,649/00 with the intention to sell it on for a profit, that being its business. It is the testimony of PW1 that the Plaintiff expected to sell it at the recommended retail price of KShs 979,985/00. The Plaintiff seeks judgment for this sum plus costs and interest.

There was no appearance for the Defendant at the hearing despite service of hearing notice upon him. The Defendant therefore did not lead or call any evidence. The testimony of PW1 was uncontroverted, and I fully believe and accept the same.

The Plaintiff's motor chassis was in police custody by order of court. It was vandalised and then subsequently stolen while in such custody. The Kenya Police was fully responsible for its loss.

In the circumstances, the Plaintiff has proved its case on a balance of probabilities. I will give it judgment for the sum of KShs 979, 985/00 plus costs and interest at court rates from the date of filing suit until payment in full. That will be the judgment of the court. There will be orders accordingly.

**DATED, SIGNED AND PRONOUNCED IN OPEN COURT AT NAIROBI THIS 2<sup>ND</sup> DAY OF DECEMBER, 2011**

**H.P.G. WAWERU**  
**JUDGE**