



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS AND TAX DIVISION

CIVIL CASE NO. 967 OF 2001

PUNCHLINES LIMITED.....PLAINTIFF

VERSUS

HYUNDAI MOTORS KENYA LTD.....1ST DEFENDANT

F. K. MOTORS (KENYA) LIMITED.....2ND DEFENDANT

JUDGMENT

1. The Plaintiff's claim as pleaded in the amended Plaint dated 31st January 2002 is that sometimes on or about March 1998 and April 2000, the Plaintiff purchased two motor vehicles registration numbers KAK 936E and KG 2631 for Kshs. 2,492,892 and 1,310,000 respectively. The first motor vehicle was purchased on hire purchase basis. The Plaintiff paid installments of Kshs. 69,247.00 per month to the 1st Defendant. All the installments were paid according to the evidence of the Plaintiff's witness Mr. Anif Mohammed Khan who produced documents comprising cheques which were made to the 1st Defendant in terms of the agreement.
2. As regards the 2nd motor vehicle, it was unregistered and, it was operating under a government a registration which the defendant had undertaken to transfer to the plaintiff. The Plaintiff paid the purchase price but withheld a sum of Kshs. 100,000.00 which the Plaintiff offered to pay upon the registration of the motor vehicle and eventual transfer in favour of the Plaintiff. The Defendant did not transfer both motor vehicles thus the Plaintiff's claim against the Defendants is for the release of the transfer of the logbook in respect of registration motor vehicle number KAK 936E and KG 2631 in the alternative, the Defendant do refund the full purchase price and be at liberty to collect the motor vehicles.
3. The Defendant filed a statement of defence and denied the claim by the Plaintiff. It was particularly denied that there was an agreement but a car lease contract between the Plaintiff and the 2nd Defendant where the Plaintiff appointed Akiba Bank Limited as their financier and they were therefore supposed to obtain the logbook from Akiba Bank. The 1st Defendant further contended that the Plaintiff failed to avail the motor vehicle registration Number KG 2631 for inspection and registration. The Plaintiff also unreasonably withheld a sum of Kshs. 100,000.00 thus the Plaintiff has no claim against the Defendants.
4. The Plaintiff gave evidence in support of their case. The evidence by the Plaintiff's witness Anif Mohammed Khan was recorded by Ransley J, the parties agreed to proceed from where Ransley J had left the matter. The Defendant did not offer any evidence in support of their defence. The defence counsel did not also file written submission notwithstanding they were given several opportunities to do so.
5. The Plaintiff's case is not challenged. The Plaintiff produced documents to support the fact that there

was car lease contract, the cheques that the Plaintiff used to pay the 1st Defendant for the agreed purchase price. The Plaintiff's witness also produced receipts for the car hire for the period which they were unable to use motor vehicle registration KG 2631 due to lack of registration. The Plaintiff testified that due to lack of registration, they were unable to obtain the license for the subject motor vehicle which could not be used on the road. Therefore, they hired an alternative transport as per the invoices that were produced. The Plaintiff spent a sum of Kshs. 590,000.00 towards the hire of an alternative vehicle because the motor vehicles registration number KG 2631 was grounded. They also incurred a sum of Kshs. 65,000.00 as storage charges.

6. The Defendant did not offer any explanation why they failed to transfer the motor vehicles according to the agreement. According to the evidence on record the Plaintiff was able to prove the claim that the 1st Defendant failed to honor the obligation contained in the agreement. Accordingly to the evidence by the Plaintiff it is not at all controverted. The documents produced by the Plaintiff clearly show the Plaintiff paid for the motor vehicles as per the agreement, however the Defendant did not transfer the motor vehicle KG 2631 as a result of this failure by the Defendant. The motor vehicle could not be sustained on the road thus the Plaintiff hired alternative motor vehicles and incurred a sum of Kshs. 655,000.00 which the Plaintiff should be awarded as general damages.

7. Since the Plaintiff has had the motor vehicles, the appropriate order could be prayer No. 1 and 2 in the following terms:

(a) The Defendants are hereby ordered to transfer motor vehicle KAK 936E to the Plaintiff and to release the logbook within thirty (30) days.

(b) The Defendants are ordered to register, transfer and release the logbook in respect of motor vehicle KG 2631 to the Plaintiff within thirty (30) days.

(c) Plaintiff is entitled to general damages in the sum of Kshs. 655,000.00 with interest from the date of filing at court rates.

(d) The Plaintiff is also entitled to the costs of this suit.

JUDGMENT READ AND SIGNED ON THIS 22ND DAY OF OCTOBER 2010

M. K. KOOME

JUDGE