

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 184 OF 2004

JAMES MAINA MWANGI.....PLAINTIFF

VERSUS

NADEM I. MOHAMMED.....DEFENDANT

JUDGMENT

On or about 11th April, 2003, the plaintiff agreed to buy from the defendant a motor vehicle registration No. KAG 479T for a consideration of Kshs.1,100,000. One of the terms of sale was that the plaintiff would take possession of the vehicle on payment of deposit and the defendant would retain the logbook until after the payment of the entire purchase price. According to the PW1 – James Maina Mwangi (hereinafter referred to as the plaintiff) there was **no** written agreement for the purchase of the Canter registration No. KAG 479T. However, after the negotiations, the plaintiff paid Kshs.300,000 in cash and also wrote a cheque for Kshs.200,000 – No. 000036 vide National Bank of Kenya.

Besides the above, the Plaintiff paid four cheques of Kshs.75,000 each. The said cheques covered the period from June to September, 2003. Apart from the above, after September, 2003 the plaintiff approached the defendant and requested him to reduce the monthly repayments. After some discussions, the defendant gave him his account number at Barclays Bank and it was agreed that the plaintiff should be transferring the sum of Kshs.50,000 per month. The plaintiff conceded that the defendant returned to him three cheques for Kshs.75,000 – Exhibit 1 (a), (b) and (c). Subsequently, the plaintiff made the transfers of Kshs.50,000 (as shown by Ex. 2 (a), (b), (c) and (d). In addition to the above, the plaintiff paid the defendant cash – Kshs.50,000 on 7th November, 2003 – as shown by the receipt – Exhibit 3. Apart from the above, the plaintiff also paid the defendant Kshs.20,000 through a cheque No. 000020 from the Co-operative Bank. Instead of the defendant accepting the cheque to be in his name, he wrote the name of one Wasim Iqbal. After the above transactions had gone through, the plaintiff wrote a demand letter – Exhibit 5. In reply, the defendant through Mr. Ikua, Advocate replied that five cheques had bounced. Unfortunately, he has **not** supplied the plaintiff with the particulars of the cheques but instead complained about the bank charges of Kshs.17,500. The plaintiff has denied that the defendant has demanded Kshs.42,500 from him. According to the plaintiff, he needs the logbook so that he may process the licence for the vehicle. His licence expired in April, 2004 and he only got another one through the intervention of his Advocate. According to the plaintiff, he normally used to earn between Kshs.5,000 to Kshs.10,000 daily from the vehicle.

On 17th August, 2004, the plaintiff requested for Judgment on the ground that the defendant had failed to file a defence within the required time. After two days, the Deputy Registrar conceded to the request and entered judgment in favour of the plaintiff. This Court has carefully perused the evidence of the plaintiff. It is apparent that his evidence has **not** been challenged nor controverted in any manner. The evidence on record is also logical and consistent. In view of the above, I find as I do that the plaintiff had bought the vehicle registration No. KAG 479T from the defendant at the agreed purchase price of Kshs.1,100,000. I also find that the plaintiff had paid the full purchase price.

Though the plaintiff claimed that he used to earn between Kshs.5,000 upto Kshs.10,000 per day, he never produced any banking slips or income tax returns to support his assertion. In view of the above, I hereby reduce the amount claimed to Kshs.3,000 per day.

The upshot is that I hereby enter final judgment in favour of the plaintiff on the following terms:

- (a) That the refusal by the defendant to release the logbook is illegal and unlawful.
- (b) The defendant is hereby directed to hand over the logbook for motor vehicle registration No. KAQ 479T to the plaintiff within 30 days from today.
- (c) General damages for breach of contract Kshs.180,000 (at the rate of Kshs.3,000 for 60 days).
- (d) Costs to the plaintiff in any event.

Right of appeal explained.

MUGA APONDI

JUDGE

20TH MARCH, 2005

Judgment read, signed and delivered in open Court in the presence of Mr. Kahiga for plaintiff and Mr. Ikua for defendant.

MUGA APONDI

JUDGE

20TH APRIL, 2005