



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

Civil Case 119 of 1999

ELIJAH BARASA WEPUKHULU.....PLAINTIFF/RESPONDENT

VS

MUNIR OMAR.....1ST DEFENDANT/RESPONDENT

MUNAWARI ALI OMAR.....2ND DEFENDANT/RESPONDENT

NATIONAL INDUSTRIAL

CREDIT BANK LTD3RD
DEFENDANT/APPLICANT

RULING

Pursuant to the provisions of Order VI rule 13 of the Civil Procedure rules and sections 3 and 3A of the Civil Procedure Act, National Industrial Credit Bank Ltd., the 3rd defendant herein, applied for the plaint to be dismissed. The summons attracted resistance from Elijah Barasa Wepukhulu, the Plaintiff/Respondent.

The history of this matter began on 3rd February 1997 when the 1st and 2nd defendants purchased motor vehicle registration number KAH 386 S on Hire Purchase terms. The deal was financed by the 3rd defendant. On the 13th day of May 1998 the 1st and 2nd defendants sold the aforesaid motor vehicle to the Plaintiff without disclosing the fact that the log book to the said motor vehicle was being held as a collateral by the 3rd defendant. It would appear the 1st and 2nd defendants defaulted in settling the monthly instalments set out in the Hire Purchase agreement of 3rd February 1997 between them and the 3rd defendant thus the 3rd defendant was forced to exercise its powers under the Hire Purchase agreement by directing for the repossession of the motor vehicle. The plaintiff got wind of the 3rd defendant's intentions and was therefore prompted to file this suit to block the move.

The 3rd defendant now wants the suit against it to be struck out because the plaintiff does not have any right to sue the 3rd defendant at all. The 3rd defendant has accused the plaintiff for being imprudent by buying the motor vehicle without verifying whether there was any encumbrance against the log book.

The 3rd defendant further argued that the 1st and 2nd defendants did not have any title to pass over the chattel to the plaintiff.

On his part, the plaintiff opposed the summons by stating that the 1st and 2nd defendants did not disclose to him that there was an outstanding loan over motor vehicle registration no.KAH 386 S. He accused the 3rd defendant of failing to disclose to him the outstanding debt. The plaintiff further claimed that his rights were protected if it is proved at the hearing that the outstanding debt stood below the percentage set out under section 15 of the Hire Purchase Act, so as the 3rd defendant would not be entitled to repossess the motor vehicle but only to sue for the balance of the debt.

I have considered these rivaling submissions. I have also perused the pleadings placed before this Court. It is not denied that there is no privity of contract between the plaintiff and the 3rd defendant. It is also evident that the 3rd defendant was not party to the sale agreement between the plaintiff, 1st and 2nd defendants dated 13th May 1998. It is not also denied that motor registration number KAH 386 S was acquired by the 1st and 2nd defendants on hire purchase terms financed by the 3rd defendant. I think the plaintiff found the deal too good so as he forgot to do the simplest thing of probing the title before taking possession. It is an old age saying that when the deal is too good think twice. He has himself to blame for going into a trap laid by insincere shrewd businessmen baying for quick profits.

In the end, I agree that the plaintiff has absolutely no cause of action against the 3rd defendant. Whether or not the 1st and 2nd defendants have paid an amount equivalent to the percentage set out under Section 15 of the Hire Purchase Act is not a matter for the plaintiff. He has no privity of contract with the 3rd defendant. That is a matter between the defendants themselves. The 3rd defendant is not bound to supply the plaintiff with the statements of accounts regarding the outstanding debt unless there is evidence that the plaintiff took over all the liabilities in respect of the motor vehicle at the time of taking possession of the same and of course with the endorsement of the 3rd defendant, the financier.

The upshot of the matter is that, the suit as against the 3rd defendant is ordered struck out and dismissed with costs to the 3rd defendant.

Dated and delivered this 16th day of November 2005.

J. K. SERGON

JUGDE

In the presence of Mr. Sichangi holding brief for Mr. Onchiri for the applicant.

NA for the Respondent.