



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
MILIMANI COMMERCIAL COURTS  
CIVIL SUIT NO. 293 OF 2001

**BANK LIMITED .....PLAINTIFF**

**VERSUS**

**BARCLAYS BANK OF KENYA**

**LIMITED.....1ST DEFENDANT**

**NANCY WAIRIMU MURIITHI .....2ND DEFENDANT**

**JUDGEMENT**

When this case came up for hearing, on the Plaintiff's counsel being unsuccessful in his application for an adjournment walked out of court. The 2nd defendant in view of the absence of the Plaintiff despite being served applied for the dismissal of the Plaintiff's case for non attendance. The court indeed entertained the 2nd defendant's application and dismissed the Plaintiff's claim for non attendance and the case proceeded with the evidence of the 2nd defendant.

The 2nd defendant described herself as a business woman residing at Embu. She purchased motor vehicle registration No. KAL 263 V, on hire purchase from the Plaintiff hereof on 14th September 1999. The second defendant purchased the said vehicle for kshs 2,007,000/-. She had a super market business, which benefited from having its merchandise transported by the said vehicle and additionally the said vehicle was hired out.

The income of the super market and the hire of the subject motor vehicle enabled the 2nd defendant to provide for her family and assisted her to repay a bank loan she had with Barclays Bank Limited.

The 2nd Defendant's woes started when the subject motor vehicle was car jacked and although it was recovered by September 2000 the vehicle, whilst in the custody of the 2nd defendant's employees was taken away by persons who claimed that they had been sent by the Plaintiff to repossess the said vehicle. On making further inquiries the Plaintiff distanced itself from that attachment and although the allegations were that the attachment was on behalf of third parties before it could be restored to the 2nd defendant the Plaintiff on or about 7th February 2001 attached the same.

The 2nd defendant on communicating with the plaintiff agreed to clear the arrears on hire plus 5 month's interest due. The Plaintiff gave the 2nd defendant 14 days to make that payment which totalled at kshs 369, 900/-

. The 2nd Defendant attended the Plaintiff's premises subsequently and spoke to the Plaintiffs a manager of the Plaintiff called Mr Maina who requested her to proceed to the banking hall and to effect the payment. It was only on the payment being made by the 2nd defendant that the Plaintiff's manager Mrs Maina told the 2nd defendant that his boss had refused to release the motor vehicle. After many

attempts to get satisfactory answer from the Plaintiff's management the 2nd defendant was informed that the subject vehicle was sold at an auction on 5th July 2001. The 2nd defendant however later learned that sale was infact effected on 10th July 2001.

The Plaintiff sold the subject vehicle for kshs 847, 458 and as a consequence of that sale were claiming a shortfall of kshs 253, 274/- from 2nd defendant. The 2nd defendant stated in evidence that the said vehicle was sold at a throw away price.

The 2nd defendant stated that the sale of the subject vehicle was wrong because she had paid all the arrears by the time sale was effected and in any case there was a subsisting court order issued by Justice Onyango Otieno (as he then was) stopping the transfer of ownership of the vehicle.

The second defendant gave evidence of the devastating effect of the sale of her motor vehicle, in that she was unable to continue with her super market business and she was unable to service the loan at Barclays bank Limited. The vehicle earned the 2nd defendant kshs 3, 000/- per day on average, the 2nd defendant produced exhibit No. 19 as proof of such earning.

Having heard the uncontroverted evidence of the 2nd defendant, I am of the view that the 2nd defendant has proved her case on a balance of probability.

From the evidence adduced by the second defendant, I am of the view that the sale of the subject motor vehicle was wrongful having been sold after the parties agreed that the second defendant could pay the arrears plus interest in order to have the vehicle released to the second defendant, indeed I am of the view that the 2nd defendant is not only entitled to damages for loss of motor vehicle but also aggravated damages. Such loss will take into account the depreciation thereof.

The judgment of this court therefore is as follows: -

- (1) That it is hereby declared that the sale of motor vehicle Registration Number KAL 263V by the Plaintiff was wrongful.
- (2) That the Plaintiff shall pay to the 2nd defendant Kshs 1, 500, 000 being the value of the loss of motor vehicle Registration Number KAL 263V.
- (3) The Plaintiff shall pay to the 2nd defendant kshs 450, 000 being the loss incurred by the 2nd defendant from February 2001 to July 2001.
- (4) The Plaintiff shall pay to the second defendant aggravated damages of kshs 250, 000/-
- (5) The Plaintiff shall pay the 2nd defendants costs of this suit.

**Dated and delivered this 23rd September 2004.**

**MARY KASANGO**

**AG JUDGE**