



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 673 OF 1996

THE CAR HIRE COMPANY PLAINTIFF

VERSUS

SUSAN NJOROGEDEFENDANT

J U D G E M E N T

In a suit filed in this court on 19th March, 1996 and amended on 13th October 1998 the plaintiff sought a sum of Kshs.503,100/= loss of use of motor vehicle registration number KAC 042N costs of the suit and interest.

A defence filed in court on 15th April, 1996 was actually a denial of the plaintiff's said claim.

On 23rd December 1994 the defendant approached a company known as Air Travel International Limited and requested that it hires out a car for her use.

She was, however, directed to the plaintiff where she signed certain documents and was given motor vehicle registration number KAC 042 N.

The motor vehicle was hired out to the defendant for three (3) days and was to be returned to the plaintiff on 26th April, 1996.

This was not done and the motor vehicle was involved in an accident on 27th April, 1996 while being driven by a Mr. Njoroge.

When examined and assessed by one Cyrus Mbogori Kangi (PW1) the motor vehicle was found to have been extensively damaged and a complete write off.

The problem was compounded when the insurer declined to compensate the plaintiff as the motor vehicle was involved in the accident when being driven by an unauthorized person in the name of a Mr. Njoroge and not the hirer, the defendant.

This is why this suit was filed in court.

The suit was heard in court on 4th October, 2001 and 1st July, 2002 when both parties testified. The plaintiff was represented by Shabir Hassan Ansari who explained how the defendant was sent to his company on 23rd December 1994 by Air Travel International Limited where he signed a contract of hire of motor vehicle registration number KAC 042 N and was given the said motor vehicle for use for 3 days.

That the defendant did not return the motor vehicle as required on 26th December 1994 but instead it was involved in the accident on 27th December 1994 when being driven by a Mr. Karanja.

When the matter was reported to the insurance company, it declined to get involved because at the time of the accident the motor vehicle was being driven by an unauthorized person.

The defendant's testimony in court was a denial that she ever entered into any agreement to hire out this motor vehicle with the plaintiff and that the company she hired the vehicle from was Air Travel International Limited.

What I understood the defendant to be saying was that she had no privity of contract with the plaintiff.

This is the evidence adduced in this case for consideration and decision.

It might be true the defendant may have gone to the company – Air Travel International Limited to inquire about the availability of a motor vehicle for hire – but no concrete arrangement was made in this regard at that company.

Instead that company simply acted as a booking office where the defendant paid the hire charges but was sent to the plaintiffs' office where she signed the hire contract (exh.2) before being handed motor vehicle registration number KAC 042 N.

The defendant should have understood that if Air Travel International Limited had any vehicles for hire, it should have provided one for her rather than send her to the plaintiff to provide her with it and to read and understand exhibit 2 which provided the basis for the hire agreement.

That the defendant did not read this agreement was not good reason for believing that her car hire contract was with Air Travel International Limited.

After all Air Travel International Limited gave the defendant nothing to confirm that it had entered into any agreement with her over this transaction.

In my view Air Travel International Limited merely acted as an agent of the plaintiff for the purpose of booking the defendant for the car and this is what the remarks on the purchase order (exh.1) meant.

The defendant is definitely liable to compensate the plaintiff for the loss of motor vehicle registration number KAC 042 N in the accident and cannot avoid it by saying she did not know she was entering into an agreement of hire with the former rather than with Air Travel International Limited.

I think the defendant has no valid defence to the plaintiff's claim and that all the arguments she put forwarded in this case were merely meant to prolong this litigation. I reject it as false.

Out of the claim of Kshs.503,100/= the plaintiff abandoned Kshs.5,700/= towing charges leaving a sum of Kshs.497,400/=. And since the claim for loss of use of the motor vehicle was also abandoned, I enter judgment for the plaintiff for Kshs.497,400/= plus costs of the suit and interest from the date of this judgment.

Delivered this 24th day of September, 2002.

D.K.S AGANYANYA

JUDGE