



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURT

CIVIL CASE NO. 1256 OF 1999.

**NATIONAL
INDUSTRIAL
CREDIT**

BANK

LIMITED.....PLAINTIFF

VERSUS

GEORGE NJENGA N.....DEFENDANT

J U D G M E N T

The Plaintiff claims from the Defendant a sum of Shs.1,481,367,00 together with interest and costs therein as prayed in the plaint.

The Plaintiff's claim is in respect of the balance due from the Defendant under a hire purchase agreement entered into by the Defendant taking into account the amount received by the Plaintiff from the sale of the vehicle KAG 002T (the subject matter of the hire purchase agreement) (the vehicle) after it was repossessed.

The Defendant in his amended defence denies that he entered into the hire purchase agreement and that he is liable for the sum claimed.

It is his case that the vehicles was bought by one Nicholas Mbugua Kaguma and that he is a stranger to the transaction. I shall deal with the various defences raised later in this judgment.

The agreement (Exh. 1) shows that the Defendant was the hirer of the vehicle and is signed on the 18.10.95 by someone purporting to be the Defendant. The question therefore is did the Defendant sign or did someone else sign the documents there by forging the Defendant's signature.

Mr. Nyangaga P.W. 1 the Credit Control Manager of the Plaintiff stated that the vehicle was bought from Central Farmers Garage and he produced the invoice attached to Exh. 1.

Exhibit 2 shows the sum due to the Plaintiff after giving credit for sums paid and the proceeds of sale of the vehicle. This sum attracted further interest in accordance with the terms of the Hire Purchase Agreement. The Defendant did not dispute this sum as being due and I hold that the Plaintiff is entitled to the sum claimed. The only question is is the Defendant liable.

Mr. Nyangaga gave evidence of the procedure to get the loan for the vehicle. This involved the application being made, the forms being with the dealers. The Plaintiff in this case examined the application and approved it subject to receiving evidence that the vehicle was insured. The Plaintiff received the application from the dealer which contained details of the hirer pin number and also a copy of his Identity card. The Identity card is that of the Defendant and has his true photograph on it.

A policy was issued by Stallion Insurance Company Limited but by its letter of the 20.5.96 to Kingsgate Insurance Brokers Ltd. (Exh.4) the Insurance Company cancelled the policy as the cheque for the premiums was returned unpaid. This letter was copied to the Plaintiff but this was after the vehicle had been repossessed.

After the vehicle had been repossessed the Defendant went to see P.W.1 in his office and said that he had entered into the hire purchase agreement but only to help a friend. When the Defendant went to see P.W. 1. he said he never entered into the agreement but could help the Plaintiff find the vehicle. P.W. 1 asked him to put this in writing which he did by his letter of the 8.11.1996 (Exh. 5) This letter apart from expressing surprise that he had entered into the agreement referred to his recalling that he had a special agreement with Mr. Nicholas Mbugua Kaguma, which did not materialise. The Defendant did not elaborate on this special agreement however. He then went on to tell the Plaintiff where the vehicle was operating.

In view of this denial by the defendant of the agreement, P.W. 1 asked for the original to determine whether the signature on the agreement tallied with that on the identity card. He also found as well as the Identity Card that the signature in the insurance certificate transaction form .and even the blank transfer forms seemed to have the same signature.

In cross-examination, the Defendant's Advocate challenged the rate of interest charged under the Agreement to which P.W. 1 replied that the Central bank of Kenya had stopped constructing interest. This was not the Defendant's case in his Defence which was a denial of the Agreement being his agreement.

P.W. 1 was challenged in his evidence on the signature and admitted he was not a handwriting expert.

The Defendant gave evidence and said the first he knew of the matter was when he got a copy of Exh. 4. He didn't know the Brokers and went to the Insurance Company and saw Mr. Ndiu the service Manager. He then went to see P.W. 1 and said he understood there was an agreement which he had no recollection of signing. He asked for copies of the agreement which he did not get. He then wrote Exh. 5. The Defendant reported the matter to the C.I.D. and Police Constable Joseph Kemboi D.W. 3 was called and produced an extract from the O.B. book (Exh. E) to corroborate the Defendant's story.

The Defendant then went on to relate the events that they took place in the following terms:

"I was very curious and reported the matter to the CID I have some background with regard to investigation. Traced matter from Stallion to N.I.C. and then to Central Farmers Garage. We discovered there had been a car which was purchased using my name but bought by Nicholas Mbugua Kaguma. We shared a common office although we were different things. He had a company Diamond Auctioneers. Had an office in Juja Lane Biashara Street. We were not doing business together. The Insurance was the one from which I got this information. The proposer for the insurance and the cheques were written by Nicholas Mbugua Kaguma. The cheques were drawn on Diamond Auctioneers. My firm is Delta Security Service."

Thereafter the Defendant went on to relate how his office had been broken into and reported the matter to Central Police Station. He had lost his logbook for his pick up a bank statement, Identity card and pin number. Only the log book was original. It appeared to be an inside job.

He also saw the delivery note at Central Garage showing that the vehicle had been received by Nicholas Mbugua Kaguma.

One wonders why the Defendant did not bring evidence from the C.I.D. as to the investigations which he said they carried out with him but only chose to give evidence of the theft from his office which is set out in Exh. E.

The defendant called William Kariuki D.W. 3 from the Insurance Company who gave evidence that the proposal for the insurance was signed by Nicholas Mbugua Kaguma a partner of the Defendant. In Cross-examination D.W. 3 said he knew the Defendant but did not know where the vehicle was and would not have been able to tell the Defendant where the vehicle was. The Defendant had in answer to a question by the court in cross-examination said that he had got the information as to where the vehicle was from Stallion.

Having considered the evidence I find that the Defendant did in fact enter into the Hire Purchase Agreement. It appears that the Defendant and Nicholas Mbugua Kaguma had a special agreement between them, as is stated in Exh. 5. The arrangement was a form of partnership whereby they were to run the vehicle for their joint benefit. I accept that the vehicle was collected by Mr. Kamau and that he issued the cheque for the insurance premium. However I find that it was part of the special Agreement between them that the Defendant would be responsible for the hire purchase payments and for this reason he entered into the Agreement.

The Defendant wrote down a number of his signatures on Exh. 6. Section 76 of the Evidence Act is as follows: “

(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to the satisfaction of the court to have been written or made by that person, may be compared by a witness or by the court with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person”.

I have examined the signatures on the various documents with the specimens in Exh. 6 as well as the signature of the Defendant in Exh. 5 and the Identity card.

The signatures on the following documents appears to be those of the Defendant.

- 1) The two signed Transfer of Ownership forms.
- 2) The Bankers order undated.
- 3) The letter from the Plaintiff of the 22.2.96 in which they informed the Central Farmers Garage Limited that the loan application form had been approved. This was confirmed by the Defendant.
- 4) The Delivery Receipt to the Hire Purchase Agreement.
- 5) The signature on the Invoice confirmation of the 24.4.96. The signature of the Defendant purporting to have been made on the 18.10.95 to the Hire Purchase Agreement. I cannot say with certainty is that of the Applicant.

I accept that the evidence of P.W. 1 is truthful and that the Defendant told him he had entered into the agreement to help a friend.

I do not believe the Defendant was telling the truth and clearly he knew of his own knowledge where the vehicle was as his story that he was told this by Stallion is not true. I accept the evidence of D.W. 3 in that respect that the Insurance Company would not be able to tell the Defendant where the vehicle was.

If the Defendant signature had been forged why did he not bring evidence from the C.I.D. of these investigations and his report to them. I do not believe he made such a report.

The alleged theft from the Defendant's office is to explain how his pin number form and Identity card came to be included in the application for the loan.

However in one document prior to the theft the Defendant had signed on the 22.2.96 the confirmation of

the acceptance of the loan form referred to above.

In my view the Defendant's story is an ingenious way of trying to absolve himself from liability under the Hire Purchase Agreement which he had entered into.

In the result, I give judgment to the Plaintiff for the sum claimed in the plaint plus interest and costs thereon as prayed.

Dated and delivered at Nairobi this 11th day of July, 2000

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE.